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No. 05-409

IN THE

Supreme Court of the United States

CARL KIRCHER, ET AL.,
Petitioners,

v.

PUTNAM FUNDS TRUST, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX
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IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Cause No. 03-L-1254

ROBERT POTTER AND DOROTHY LUETTINGER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiffs,

v.

JANUS INVESTMENT FUND, A BUSINESS TRUST; JANUS CAPITAL MANAGEMENT, LLC; SCUDDER INTERNATIONAL FUND, INC., A CORPORATION; AND DEUTSCHE INVESTMENT MANAGEMENT AMERICAS, INC.,
Defendants.

[Filed Sept. 16, 2003]

COMPLAINT

COME NOW Plaintiffs, ROBERT POTTER and DOROTHY LUETTINGER, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for their complaint against Defendants, JANUS INVESTMENT FUND, JANUS CAPITAL MANAGEMENT, LLC, SCUDDER INTERNATIONAL FUND, INC., and DEUTSCHE INVESTMENT MANAGEMENT AMERICAS, INC., state as follows:

1. Plaintiff ROBERT POTTER is a resident of Edwardsville, Madison County, Illinois.

2. Plaintiff DOROTHY LUETTINGER is a resident of Trenton, Clinton County, Illinois.

3. Defendant JANUS INVESTMENT FUND ("JANUS FUNDS") is a Massachusetts business trust with its principal place of business in Denver, Colorado. JANUS FUNDS is

the sponsor of the Janus Overseas Fund ("Janus Overseas"). Defendant JANUS FUNDS does business in the state of Illinois and is registered as a mutual fund in the state of Illinois. Defendant JANUS FUNDS has consented to the jurisdiction of Illinois courts. Defendants JANUS FUNDS at all times relevant herein has promoted, marketed, and sold shares to the investing public nationwide including the state of Illinois. Defendant JANUS FUNDS maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant JANUS FUNDS has significant contacts with Madison County and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

4. Defendant JANUS CAPITAL MANAGEMENT, LLC ("JANUS FUNDS MANAGER") is a Delaware limited liability company with its principal place of business in Denver, Colorado. The day-to-day tasks associated with running the business of Janus Overseas Fund, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and custodianship of funds are contracted out since it has no significant number of internal employees. Defendant JANUS FUNDS MANAGER has been contracted to serve as the investment manager for the Janus Overseas Fund. As the investment manager for Janus Overseas Fund, Defendant JANUS FUNDS MANAGER selects the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant JANUS FUNDS MANAGER has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of Janus Overseas Fund business and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant JANUS FUNDS MANAGER utilizes an interactive website to communicate with fund shareholders, including those in Madison County, Illinois, regarding the performance of the Fund and the investments it manages.

5. Defendant SCUDDER INTERNATIONAL FUND, INC. ("SCUDDER FUNDS") is a Maryland corporation with its principal place of business in New York, New York. SCUDDER FUNDS is the sponsor of the Scudder International Fund ("Scudder International"). Defendant SCUDDER FUNDS does business in the state of Illinois and is registered as a mutual fund in the state of Illinois. Defendant SCUDDER FUNDS has consented to the jurisdiction of Illinois courts. Defendant SCUDDER FUNDS at all times relevant herein has promoted, marketed, and sold shares to the investing public nationwide including the state of Illinois. Defendant SCUDDER FUNDS maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant SCUDDER FUNDS has significant contacts with Madison County, and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

6. Defendant DEUTSCHE INVESTMENT MANAGEMENT AMERICAS, INC. ("SCUDDER FUND MANAGER") is a Delaware corporation with its principal place of business in New York, New York. The day-to-day tasks associated with running the business of Scudder International, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and custodianship of funds, are contracted out since it has no significant number of internal employees. Defendant SCUDDER FUND MANAGER has been contracted to serve as the investment manager for Scudder International. As the investment manager for Scudder International, Defendant SCUDDER FUND MANAGER selects the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant SCUDDER FUND MANAGER has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of Scudder International business and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant SCUDDER FUND MANAGER utilizes an interactive website to communicate

with fund shareholders, including those in Madison County, Illinois regarding the performance of the Fund and the investments it manages.

7. At all times relevant herein, Plaintiff ROBERT POTTER has owned and held shares of Janus Overseas for the purpose of long term investing in international securities.

8. At all times relevant herein, Plaintiff DOROTHY LUETTINGER has owned and held shares of Scudder International for the purpose of long term investing in international securities.

9. This Court has jurisdiction over the subject matter and the parties pursuant to 735 ILCS 5/2-209.

10. Venue is proper in this Court pursuant to 735 ILCS 5/2-101.

11. The foreign securities purchased by Defendants' Funds for their portfolios are principally traded in securities markets outside of the United States.

12. Open end mutual funds such as Defendants' Funds have been tremendously successful in convincing investors such as plaintiffs to hold their fund shares by urging investors to invest for the long term and by effectively marketing the various advantages of long term ownership of funds over direct investment including professional management, diversification, and liquidity.

13. Shares of open end mutual funds are sold to investors such as Plaintiffs at a price based upon the net asset value ("NAV") per share plus applicable sales charges. Investors in shares may redeem their shares at the NAV of the shares less any redemption charges.

14. The share prices (NAV) of Defendants' mutual funds are set by deducting the fund liabilities from the total assets of the portfolio and then dividing by the number of outstanding shares.

15. Because the sales and redemption prices are based upon NAV, which in turn depends upon the fluctuating value of the fund's underlying portfolio of securities, Defendants recalculate the fund net asset value every business day. Defendants set the fund share price (NAV) once every business day at the close ~~of trading~~ on the New York Stock Exchange at 4:00 p.m. Eastern Time. The NAV of the shares is reported by Defendants to the National Association of Securities Dealers (NASD) for public distribution.

16. In valuing its underlying assets for purposes of setting the NAV, Defendants use the last trade price in the home market of each of the securities in its portfolio. A significant portion of the securities in the Defendants' portfolios are foreign securities. The home markets for such foreign securities include London, Paris, Frankfurt, Moscow, Singapore, Kuala Lumpur, Hong Kong, Taipei, Tokyo and Sydney. These markets are located in time zones that are five hours to fifteen hours ahead of Eastern Standard Time.

17. Studies of world financial markets have established associations between the value changes among various markets. There is a positive correlation between value movements in the United States market and value movements in foreign markets. If the United States market experiences an upward movement in values, it can be predicted that Asian markets will move upward once trading begins their next day. The same upward movement can be predicted for European markets once trading begins their next day. Similarly, if the United States market experiences a downward movement in values, it can be predicted that Asian and European markets will move downward once trading begins their next day. Because of these positive correlations, the closing prices of the foreign securities in the underlying portfolio may not reflect current market values at the time Defendants set their fund NAV. Appropriate adjustments need to be made to the closing prices of the foreign securities in order to reflect current market

values. Despite knowledge of the United States market result, the positive correlations and the stale price of the foreign securities in its underlying portfolio, Defendants do not make any value adjustment to the portfolio's foreign securities prior to calculating fund NAV and setting share price every business day.

18. The positive correlation between the upward or downward movement of value in the United States market and subsequent movements in foreign markets around the world is between 0.7 and 0.8. A value of 0.0 equates to absolutely no correlation between value movements in United States markets and subsequent movements in foreign markets. A value of 1.0 equates to an absolute correlation between value movements in United States markets and subsequent value movements in foreign markets.

19. Studies of world financial markets demonstrate that the greater the percentage increase or decrease in the value of United States markets, the more likely foreign markets will post corresponding value movements on subsequent days. The probability that the value movements of foreign markets will follow the previous day's value movements in United States markets is directly correlated with the degree or extent of the value movement of United States markets.

20. Since many of the home markets for the foreign securities in the Defendants' asset portfolio last traded hours before the setting at 4:00 p.m. Eastern of the fund NAV, the closing prices used to calculate the NAV of Defendants' funds are stale and do not reflect price relevant information available subsequent to the foreign security's last trade that will affect the value of such security.

21. During the interval that elapses between the time that Defendants set their share NAV (and release it to the NASD for communication to the public) on consecutive days, the securities markets in Australia, Japan, Taiwan, Hong Kong, Malaysia, Singapore, Russia, Germany,

France and the United Kingdom have traded for an entire session from open to close.

22. The exchange located in Sydney, Australia observes normal market trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

23. The exchange located in Tokyo, Japan observes normal trading hours of 9:00 a.m. to 3:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 3:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

24. The exchange located in Taipei, Taiwan observes normal trading hours of 9:00 a.m. to 1:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 1:30 p.m. local time (1:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14.5 hours.

25. The exchange located in Hong Kong observes normal trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (4:00 a.m. Eastern time). When Defendants calculate its fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securi-

ties traded on this exchange that have been static for 12 hours.

26. The exchange located in Kuala Lumpur, Malaysia observes normal trading hours of 9:30 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

27. The exchange located in Singapore observes normal trading hours of 9:00 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

28. The exchange located in Moscow, Russia observes normal trading hours of 12:00 p.m. to 7:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 7:00 p.m. local time (11:00 a.m. Eastern time). When Defendants calculate their fund NAV, using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 5 hours.

29. The exchange located in Frankfurt, Germany observes normal trading hours of 9:00 a.m. to 8:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 8:00 p.m. local time (2:00 p.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 2 hours.

30. The exchange located in Paris, France observes normal trading hours of 9:00 a.m. to 5:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at, 5:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV, using closing prices from this exchange Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

31. The exchange located in London, England observes normal market hours of 8:00 a.m. to 4:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at 4:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

32. A significant portion of the underlying foreign securities in the Defendants' portfolios are listed on foreign exchanges and trade during each market's respective session. The NAVs set by Defendants do not take into account on a daily basis any price relevant information that has become available in this two to fourteen and one/half hour interval, after the final prices for the underlying foreign securities have been posted but, prior to the setting of the NAVs. Such price relevant information impacts the valuation of these underlying foreign securities and is significant for valuation because the final market prices have become stale and do not reflect the current market value of the securities.

33. By failing to make daily adjustments based upon positive correlations between upward or downward movements in United States and foreign markets and by choosing to use stale prices in valuing their fund shares and setting their daily NAVs, Defendants have exposed long term shareholders to market timing traders who regularly purchase and redeem Defendants' shares as part of a profit-

able trading strategy. The market timing trading strategy stems from the ability of market timing traders to predict changes in the NAV. Market timing traders are able to predict changes in the NAV because of the positive correlations between value movements in United States markets and foreign markets. The stale price strategy of market timers who trade Defendants' shares is to buy shares on days when the United States market moves up and to sell (redeem) shares when the United States market moves down. In order to derive maximum benefit from price relevant information developed subsequent to the now stale closing prices of the portfolio securities, market timers wait until the fund deadline for buying or selling (redeeming) shares in Defendants' funds on any particular business day. Because Defendants cannot buy or sell the foreign securities in the funds' underlying portfolio (due to the time difference between New York and the home markets of the foreign securities) at the time it sets the daily NAV that values the shares it issues and redeems, the shares that Defendants issue to and redeem from market timers do not reflect current market prices of the foreign securities held by the fund.

34. Due to the use of stale prices by Defendants in valuing the fund shares, market timers who buy Defendants' funds' shares on days when the United States market moves up are buying discounted shares at the expense of other fund shareholders because the funds underlying foreign securities assets are undervalued as of the time of the share purchase.

35. Due to the use of stale prices by Defendants in valuing their fund shares, market timers who sell (redeem) Defendants' shares on days when the United States market moves down are selling (redeeming) shares at a premium at the expense of other fund shareholders because the underlying foreign securities assets are overvalued as of the time of the share sale (redemption).

36. Shares in Defendants' funds can be traded, either by purchase or redemption, only once a day at 4:00 p.m. Eastern Time.

37. The excess profits that are obtained by market timing traders' taking advantage of the stale pricing of Defendants' shares come at the expense of fellow shareholders who are non-trading long term buy and hold investors. The transfer of wealth from the non-trading long term buy and hold shareholders to the market timers trading Defendants shares in Defendants' funds occurs through dilution.

38. Market timing traders pay cash to Defendants funds when they purchase discounted shares. Market timing traders receive cash from Defendants funds when they sell (redeem) their shares at a premium. Defendants' fund NAV is diluted in both instances. When market timing traders are able to buy shares at a discount, Defendants' fund assets suffer dilution because the cash received by the fund for the shares purchased is less than the per share value of the underlying foreign securities because of the stale pricing utilized by Defendants. Likewise, when market timing traders are able to sell (redeem) shares at a premium, Defendants' fund assets suffer dilution because the cash paid out by the fund for the shares redeemed is more than the per share value of the underlying securities, again due to the stale pricing utilized by Defendants. In both instances, when Defendants receive less cash when issuing and pay out more cash when redeeming market timing trader shares than supported by the value of their underlying foreign securities, the result is a dilution of Defendants' cash. Since the cash held by the fund is one of the assets that is valued in setting the Defendants' daily fund NAV, it follows that the diluted fund cash position causes the fund NAV to be diluted as well. Due to the stale pricing utilized by Defendants, long term buy and hold shareholders have incurred a dilution in the NAV of their shares and the wealth represented by that diluted amount has been transferred to market timing traders.

39. By failing to make daily adjustments based upon positive correlations between upward movements in United States and foreign markets and by choosing to use stale prices in valuing the underlying foreign securities that are used setting their daily NAV, Defendants give market timing traders the opportunity to earn vastly higher returns at no additional risk. Unlike other market timing based trading, market timers who trade Defendants shares do not have to look into the future to time their purchases and redemptions of shares, rather, they have the luxury of being able to look backwards because Defendants' share pricing fails to adjust for recognized positive correlations and uses stale prices in valuing its underlying portfolio securities.

40. Since it is such an attractive low risk trading vehicle to market timers, Defendants' funds experience increased trading and transaction costs, disruption of planned investment strategies, forced and unplanned portfolio turnover including the liquidation of investments to meet market timer redemption requests, lost opportunity costs and asset swings that negatively impact fund operations and performance and the ability of the fund to provide a maximized return to long term shareholders.

41. Plaintiffs bring this complaint as a class action against Defendants JANUS FUNDS, JANUS FUNDS MANAGER, SCUDDER FUNDS and SCUDDER FUND MANAGER, and pursuant to § 5/2-801 et seq., of the Illinois Code of Civil Procedure individually and on behalf of a class of all persons in the United States who have owned shares in Janus Overseas or Scudder International for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ("long term shareholders"). The class period commences five years prior to the filing of this complaint. Excluded from the class are Defendants, any parent, subsidiary, affiliate, or controlled Person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family mem-

ber of any such person. Also excluded is any judge who may preside over this case.

42. Plaintiffs are members of the class and will fairly and adequately assert and protect the interests of the class. The interests of the Plaintiffs are coincident with, and not antagonistic to, those of other members of the class. Plaintiffs have retained attorneys who are experienced in class action litigation.

43. Members of the class are so numerous that joinder of all members is impracticable.

44. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

i. whether defendants failed to properly evaluate on a daily basis whether a significant event affecting the value of Janus Overseas and Scudder International's portfolios of securities had occurred after the foreign home markets for such securities had closed but before the fund's NAV calculation and share price setting;

ii. whether defendants failed to properly implement Janus Overseas and Scudder International's portfolios valuation and share pricing policies and procedures making daily adjustments based upon United States market results and recognized positive correlations between upward movements in United States and foreign markets in the valuation of the fund's portfolio securities prior to the calculation of the fund NAV and setting of the share price;

iii. whether defendants failed to properly implement Janus Overseas and Scudder International's portfolio valuation and share pricing policies and procedures making daily adjustments to stale closing prices of the underlying portfolio securities before the fund's NAV calculation and share price setting;

iv. whether defendants failed to properly implement Janus Overseas and Scudder International's portfolio valuation and share pricing policies so as to require the use of fair value pricing on a daily basis to value portfolio securities and fund NAV and share prices when closing prices of portfolio securities did not reflect their market values;

v. whether defendants failed to protect Janus Overseas and Scudder International's long term shareholders from market timing traders of fund shares who use Janus Overseas and Scudder International's shares as a trading vehicle to earn profits at the expense of long term shareholders because of the failure of JANUS FUNDS, JANUS FUNDS MANAGER, SCUDDER FUNDS and SCUDDER FUND MANAGER to make daily adjustments, based upon known United States market results and recognized positive correlations between upward movements in United States and foreign markets, prior to the daily calculation of the fund NAV and the setting of share prices as well as their use of stale prices in the valuation of the fund's portfolio securities prior to the daily calculation of the fund NAV and the setting of share prices;

vi. whether defendants breached the duties they owed to plaintiffs and the class;

vii. whether plaintiffs and the class have been damaged and, if so,

viii. the extent of such damages.

45. The prosecution of separate actions by individual members of the Class would create a risk of:

i. inconsistent or varying adjudications with respect to individual members of the class; and

ii. adjudication with respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other members not

parties to the adjudication or substantially impair or impede their ability to protect their interest.

46. The class action method is appropriate for the fair and efficient prosecution of this action.

47. Individual litigation of all claims, which might be brought by all class members would produce a multiplicity of cases so that the judicial system would be congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising from the conduct of the defendants.

48. The certification of a class would allow litigation of claims that, in view of the expense of the litigation, may be insufficient in amount to support separate actions.

Count I

COMES NOW Plaintiff, ROBERT POTTER, individually and on behalf of all others similarly situation [*sic*], by and through his undersigned counsel, and for Count I of his Complaint against Defendants JANUS FUNDS and JANUS FUNDS MANAGER, states as follows:

49. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 as if fully set forth herein.

50. Defendant JANUS FUNDS operates Janus Overseas as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

51. Defendant JANUS FUNDS MANAGER serves as the investment manager for Janus Overseas. Defendant JANUS FUNDS MANAGER provides, among other things, portfolio management services and selects the securities for Janus Overseas to buy, hold or sell. Janus Overseas pays Defendant JANUS FUNDS MANAGER set fees based on

the percentage of assets under management for managing Janus Overseas' assets. Defendant JANUS FUNDS MANAGER's compensation and management of the Janus Overseas Fund are required to be reviewed and approved by Defendant Janus Fund's board of trustees.

52. At all times relevant hereto, Plaintiff POTTER has owned shares in Janus Overseas.

53. In undertaking their role as investment managers with respect to the Funds, Defendants directly or impliedly held themselves out as skilled specialists in the field of investment management, possessing the knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

54. It thereby became the duty of Defendants to exercise that degree of knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

55. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities represented in the Janus Overseas Fund and used by Defendants to calculate NAV for said Fund did not represent fair value because, inter alia, those prices did not reflect changes in trading prices as a result of trading which Defendants knew, or were negligent in not knowing, occurred daily after the closing of the New York Stock Exchange.

56. Defendants breached their duties of due care owed to Plaintiff Potter and similarly situated owners of the Janus Overseas Fund by, inter alia:

i. failing to properly evaluate on a daily basis whether a significant event affecting the value of Janus Overseas' portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

ii. failing to implement Janus Overseas' portfolio valuation and share pricing policies and procedures; and

iii. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Janus Overseas shares' at the expense of long term shareholders.

57. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff Potter and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Defendants JANUS INVESTMENT FUND and JANUS CAPITAL MANAGEMENT LLC, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Janus Overseas Fund or Scudder International Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

Count II

COMES NOW Plaintiff, ROBERT POTTER, individually and on behalf of all others similarly situation [*sic*], by and through his undersigned counsel, and for Count II of his Complaint against Defendants JANUS FUNDS and JANUS FUNDS MANAGER, states as follows:

58. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 and 50 through 55 as if fully set forth herein.

59. On or about January 1, 1965, applicable published regulations expressly recognized that changes in trading prices of securities in the Janus Overseas Fund might occur daily after the closing of the New York Stock Exchange.

60. With utter indifference and conscious disregard for Plaintiff POTTER'S investment and the investments of similarly situated fund owners, Defendants willfully and wantonly breached their duties to Plaintiff POTTER and similarly situated owners by, inter alia:

i. failing to know and implement applicable rules and regulations concerning the calculation of NAV;

ii. failing to properly evaluate on a daily basis whether a significant event affecting the value of Janus Overseas' portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

iii. failing to implement Janus Overseas' portfolio valuation and share pricing policies and procedures; and

iv. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Janus Overseas' shares at the expense of long term shareholders.

61. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff Potter and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Defendants JANUS INVESTMENT FUND and JANUS CAPITAL MANAGEMENT LLC, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Janus Overseas Fund or Scudder International Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

Count III

COMES NOW Plaintiff, DOROTHY LUETTINGER, individually and on behalf of all others similarly situated, by and through her undersigned counsel, and for Count III of her Complaint against Defendants SCUDDER FUNDS and SCUDDER FUND MANAGER, states as follows:

62. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 as if fully set forth herein.

63. Defendant SCUDDER FUNDS operates Scudder International Fund as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

64. Defendant SCUDDER FUND MANAGER serves as the investment manager for Scudder International. Defendant SCUDDER FUND MANAGER provides, among other things, portfolio management services and selects the securities for Scudder International to buy, hold or sell. Scudder International pays Defendant SCUDDER FUND MANAGER set fees based on the percentage of assets under management for managing Scudder International's assets. Defendant SCUDDER FUND MANAGER's compensation and management of the Scudder International Fund are required to be reviewed and approved by Defendant SCUDDER FUNDS' board of trustees.

65. At all times relevant hereto, Plaintiff LUETTINGER has owned shares in Scudder International.

66. In undertaking their role as investment managers with respect to the Funds, Defendants directly or impliedly held themselves out as skilled specialists in the field of investment management, possessing the knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

67. It thereby became the duty of Defendants to exercise that degree of knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

68. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities represented in the Scudder International Fund and used by Defendants to calculate NAV for said Fund did not represent fair value because, inter alia, those prices did not reflect changes in trading prices as a result of trading which De-

fendants knew, or were negligent in not knowing, occurred daily after the closing of the New York Stock Exchange.

69. Defendants breached their duties of due care owed to Plaintiff LUETTINGER and similarly situated owners of the Scudder International Fund by, inter alia:

i. failing to properly evaluate on a daily basis whether a significant event affecting the value of Scudder International's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

ii. failing to implement Scudder International's portfolio valuation and share pricing policies and procedures; and

iii. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Scudder International's shares at the expense of long term shareholders.

70. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff LUETTINGER and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Defendants SCUDDER INTERNATIONAL FUND, INC. and DEUTSCHE INVESTMENT MANAGEMENT AMERICAS, INC., as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Janus Overseas Fund or Scudder International Fund for a period of more than fourteen days before redeeming or exchanging them during the period

beginning from five years prior to the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

Count IV

COMES NOW Plaintiff, DOROTHY LUETTINGER, individually and on behalf of all others similarly situated, by and through her undersigned counsel, and for Count IV of her Complaint against Defendants SCUDDER FUNDS and SCUDDER FUND MANAGER, states as follows:

71. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 and 63 through 68 as if fully set forth herein.

72. On or about January 1, 1965, applicable published regulations expressly recognized that changes in trading prices of securities in the Scudder International Fund might occur daily after the closing of the New York Stock Exchange.

73. With utter indifference and conscious disregard for Plaintiff's investment and the investments of similarly situated fund owners, Defendants willfully and wantonly breached their duties to Plaintiff LUETTINGER and similarly situated owners by, inter alia:

i. failing to know and implement applicable rules and regulations concerning the calculation of NAV;

ii. failing to properly evaluate on a daily basis whether a significant event affecting the value of Scudder International's portfolio of securities had occurred after the foreign trading markets for such

securities had closed but before Defendants calculated NAV and share prices;

iii. failing to implement Scudder International's portfolio valuation and share pricing policies and procedures; and

iv. allowing portfolio valuation and share pricing policies and procedures which benefitted market timing traders of Scudder International's shares at the expense of long term shareholders.

74. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff LUETTINGER and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Defendants SCUDDER INTERNATIONAL FUND, INC. and DEUTSCHE INVESTMENT MANAGEMENT AMERICAS, INC., as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Janus Overseas Fund or Scudder International Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

[attorney name and address blocks omitted]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Cause No. 03-L-1255

CARL KIRCHER AND ROBERT BROCKWAY,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,
Plaintiffs,

v.

PUTNAM FUNDS TRUST, A BUSINESS TRUST,
PUTNAM INVESTMENT MANAGEMENT, LLC,
EVERGREEN INTERNATIONAL TRUST, A BUSINESS TRUST, AND
EVERGREEN INVESTMENT MANAGEMENT COMPANY, LLC,
Defendants.

[Filed Sept. 16, 2003]

COMPLAINT

COME NOW Plaintiffs, CARL KIRCHER and ROBERT BROCKWAY, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for their Complaint against Defendants, PUTNAM FUNDS TRUST, PUTNAM INVESTMENT MANAGEMENT, LLC, EVERGREEN INTERNATIONAL TRUST, and EVERGREEN INVESTMENT MANAGEMENT COMPANY, LLC, state as follows:

1. Plaintiff Carl Kircher, is a resident of Troy, Madison County, Illinois.

2. Plaintiff ROBERT BROCKWAY is a resident of Belleville, St. Clair County, Illinois.

3. Defendant PUTNAM FUNDS TRUST, ("PUTNAM FUNDS") is a Massachusetts business trust with its princi-

pal place of business in Boston, Massachusetts. PUTNAM FUNDS is the sponsor of the Putnam International Growth & Income Fund ("Putnam International Growth & Income"). Defendant PUTNAM FUNDS does business in the state of Illinois and is registered as a mutual fund in the state of Illinois. Defendant PUTNAM FUNDS has consented to the jurisdiction of Illinois courts. Defendant PUTNAM FUNDS at all times relevant herein has promoted, marketed, and sold shares to the investing public nationwide including the state of Illinois. Defendant PUTNAM FUNDS maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant PUTNAM FUNDS has significant contacts with Madison County, and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

4. Defendant PUTNAM INVESTMENT MANAGEMENT, LLC ("PUTNAM FUND MANAGER") is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. The day-to-day tasks associated with running the business of Putnam International Growth & Income, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and custodianship of funds, are contracted out since it has no significant number of internal employees. Defendant PUTNAM FUND MANAGER has been contracted to serve as the investment manager for the Putnam International Growth & Income. As the investment manager for Putnam International Growth & Income, Defendant PUTNAM FUND MANAGER selects the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant PUTNAM FUND MANAGER has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of Putnam International Growth & Income business, and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant PUTNAM FUND MANAGER utilizes an interactive website to communicate with fund shareholders, including

those in Madison County, Illinois regarding the performance of the Fund and the investments it manages.

5. Defendant EVERGREEN INTERNATIONAL TRUST ("EVERGREEN FUNDS") is a Delaware business trust with its principal place of business in Boston, Massachusetts. EVERGREEN FUNDS is the sponsor of the Evergreen International Growth Fund ("Evergreen International"). Defendant EVERGREEN FUNDS does business in the state of Illinois and is registered as a mutual fund in the state of Illinois. Defendant EVERGREEN FUNDS has consented to the jurisdiction of Illinois courts. Defendant EVERGREEN FUNDS at all times relevant herein has promoted, marketed, and sold shares to the investing public nationwide including the state of Illinois. Defendant EVERGREEN FUNDS maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant EVERGREEN FUNDS has significant contacts with Madison County, and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

6. Defendant EVERGREEN INVESTMENT MANAGEMENT COMPANY, LLC ("EVERGREEN FUND MANAGER") is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. The day-to-day tasks associated with running the business of Evergreen International, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and custodianship of funds, are contracted out since it has no significant number of internal employees. Defendant EVERGREEN FUND MANAGER has been contracted to serve as the investment manager for the Evergreen International. As the investment manager for Evergreen International, Defendant EVERGREEN FUND MANAGER selects the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant EVERGREEN FUND MANAGER has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of

Evergreen International business and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant EVERGREEN FUND MANAGER utilizes an interactive website to communicate with fund shareholders, including those in Madison, Illinois, regarding the performance of the Fund and the investments it manages.

7. At all times relevant herein, Plaintiff CARL KIRCHER has owned and held shares of Putnam International Growth & Income Fund for the purpose of long term investing in international securities.

8. At all times relevant herein, Plaintiff ROBERT BROCKWAY has owned and held shares of Evergreen International in his Individual Retirement Account for the purpose of long term investing in international securities.

9. This Court has jurisdiction over the subject matter and the parties pursuant to 735 ILCS 5/2-209.

10. Venue is proper in this Court pursuant to 735 ILCS 5/2-101.

11. The foreign securities purchased by Defendants' Funds for their portfolios are principally traded in securities markets outside of the United States.

12. Open end mutual funds such as Defendants' Funds have been tremendously successful in convincing investors such as plaintiffs to hold their fund shares by urging investors to invest for the long term and by effectively marketing the various advantages of long term ownership of funds over direct investment including professional management, diversification, and liquidity.

13. Shares of open end mutual funds are sold to investors such as Plaintiffs at a price based upon the net asset value ("NAV") per share plus applicable sales charges. Investors in shares may redeem their shares at the NAV of the shares less any redemption charges.

14. The share prices (NAV) of Defendants' mutual funds are set by deducting the fund liabilities from the total assets of the portfolio and then dividing by the number of outstanding shares.

15. Because the sales and redemption prices are based upon NAV, which in turn depends upon the fluctuating value of the fund's underlying portfolio of securities, Defendants recalculate the fund net asset value every business day. Defendants set the fund share price (NAV) once every business day at the close of trading on the New York Stock Exchange at 4:00 p.m. Eastem Time. The NAV of the shares is reported by Defendants to the National Association of Securities Dealers (NASD) for public distribution.

16. In valuing its underlying assets for purposes of setting the NAV, Defendants use the last trade price in the home market of each of the securities in its portfolio. A significant portion of the securities in the Defendants' portfolios are foreign securities. The home markets for such foreign securities include London, Paris, Frankfurt, Moscow, Singapore, Kuala Lumpur, Hong Kong, Taipei, Tokyo and Sydney. These markets are located in time zones that are five hours to fifteen hours ahead of Eastern Standard Time.

17. Studies of world financial markets have established associations between the value changes among various markets. There is a positive correlation between value movements in the United States market and value movements in foreign markets. If the United States market experiences an upward movement in values, it can be predicted that Asian markets will move upward once trading begins their next day. The same upward movement can be predicted for European markets once trading begins their next day. Similarly, if the United States market experiences a downward movement in values, it can be predicted that Asian and European markets will move downward once trading begins their next day. Because of these positive correlations, the closing prices of the foreign securities

in the underlying portfolio may not reflect current market values at the time Defendants set their fund NAV. Appropriate adjustments need to be made to the closing prices of the foreign securities in order to reflect current market values. Despite knowledge of the United States market result, the positive correlations and the stale price of the foreign securities in its underlying portfolio, Defendants do not make any value adjustment to the portfolio's foreign securities prior to calculating fund NAV and setting share price every business day.

18. The positive correlation between the upward or downward movement of value in the United States market and subsequent movements in foreign markets around the world is between 0.7 and 0.8. A value of 0.0 equates to absolutely no correlation between value movements in United States markets and subsequent movements in foreign markets. A value of 1.0 equates to an absolute correlation between value movements in United States markets and subsequent value movements in foreign markets.

19. Studies of world financial markets demonstrate that the greater the percentage increase or decrease in the value of United States markets, the more likely foreign markets will post corresponding value movements on subsequent days. The probability that the value movements of foreign markets will follow the previous day's value movements in United States markets is directly correlated with the degree or extent of the value movement of United States markets.

20. Since many of the home markets for the foreign securities in the Defendants' asset portfolio last traded hours before the setting at 4:00 p.m. Eastern of the fund NAV, the closing prices used to calculate the NAV of Defendants' funds are stale and do not reflect price relevant information available subsequent to the foreign security's last trade that will affect the value of such security.

21. During the interval that elapses between the time that Defendants set their share NAV (and release it to the

NASD for communication to the public) on consecutive days, the securities markets in Australia, Japan, Taiwan, Hong Kong, Malaysia, Singapore, Russia, Germany, France and the United Kingdom have traded for an entire session from open to close.

22. The exchange located in Sydney, Australia observes normal ~~market trading~~ hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

23. The exchange located in Tokyo, Japan observes normal trading hours of 9:00 a.m. to 3:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 3:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

24. The exchange located in Taipei, Taiwan observes normal trading hours of 9:00 a.m. to 1:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 1:30 p.m. local time (1:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14.5 hours.

25. The exchange located in Hong Kong observes normal trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (4:00 a.m. Eastern time). When Defen-

dants calculate its fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 12 hours.

26. The exchange located in Kuala Lumpur, Malaysia observes normal trading hours of 9:30 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

27. The exchange located in Singapore observes normal trading hours of 9:00 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

28. The exchange located in Moscow, Russia observes normal trading hours of 12:00 p.m. to 7:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 7:00 p.m. local time (11:00 a.m. Eastern time). When Defendants calculate their fund NAV, using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 5 hours.

29. The exchange located in Frankfurt, Germany observes normal trading hours of 9:00 a.m. to 8:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 8:00 p.m. local time (2:00 p.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices

for securities traded on this exchange that have been static for 2 hours.

30. The exchange located in Paris, France observes normal trading hours of 9:00 a.m. to 5:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at, 5:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV, using closing prices from this exchange Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

31. The exchange located in London, England observes normal market hours of 8:00 a.m. to 4:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at 4:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

32. A significant portion of the underlying foreign securities in the Defendants' portfolios are listed on foreign exchanges and trade during each market's respective session. The NAVs set by Defendants do not take into account on a daily basis any price relevant information that has become available in this two to fourteen and one/half hour interval, after the final prices for the underlying foreign securities have been posted but, prior to the setting of the NAVs. Such price relevant information impacts the valuation of these underlying foreign securities and is significant for valuation because the final market prices have become stale and do not reflect the current market value of the securities.

33. By failing to make daily adjustments based upon positive correlations between upward or downward movements in United States and foreign markets and by choosing to use stale prices in valuing their fund shares and set-

ting their daily NAVs. Defendants have exposed long term shareholders to market timing traders who regularly purchase and redeem Defendants' shares as part of a profitable trading strategy. The market timing trading strategy stems from the ability of market timing traders to predict changes in the NAV. Market timing traders are able to predict changes in the NAV because of the positive correlations between value movements in United States markets and foreign markets. The stale price strategy of market timers who trade Defendants' shares is to buy shares on days when the United States market moves up and to sell (redeem) shares when the United States market moves down. In order to derive maximum benefit from price relevant information developed subsequent to the now stale closing prices of the portfolio securities, market timers wait until the fund deadline for buying or selling (redeeming) shares in Defendants' funds on any particular business day. Because Defendants cannot buy or sell the foreign securities in the funds' underlying portfolio (due to the time difference between New York and the home markets of the foreign securities) at the time it sets the daily NAV that values the shares it issues and redeems, the shares that Defendants issue to and redeem from market timers do not reflect current market prices of the foreign securities held by the fund.

34. Due to the use of stale prices by Defendants in valuing the fund shares, market timers who buy Defendants' funds' shares on days when the United States market moves up are buying discounted shares at the expense of other fund shareholders because the funds underlying foreign securities assets are undervalued as of the time of the share purchase.

35. Due to the use of stale prices by Defendants in valuing their fund shares, market timers who sell (redeem) Defendants' shares on days when the United States market moves down are selling (redeeming) shares at a premium at the expense of other fund shareholders be-

cause the underlying foreign securities assets are overvalued as of the time of the share sale (redemption).

36. Shares in Defendants' funds can be traded, either by purchase or redemption, only once a day at 4:00 p.m. Eastern Time.

37. The excess profits that are obtained by market timing traders' taking advantage of the stale pricing of Defendants' shares come at the expense of fellow shareholders who are non-trading long term buy and hold investors. The transfer of wealth from the non-trading long term buy and hold shareholders to the market timers trading Defendants shares in Defendants' funds occurs through dilution.

38. Market timing traders pay cash to Defendants funds when they purchase discounted shares. Market timing traders receive cash from Defendants funds when they sell (redeem) their shares at a premium. Defendants' fund NAV is diluted in both instances. When market timing traders are able to buy shares at a discount, Defendants' fund assets suffer dilution because the cash received by the fund for the shares purchased is less than the per share value of the underlying foreign securities because of the stale pricing utilized by Defendants. Likewise, when market timing traders are able to sell (redeem) shares at a premium, Defendants' fund assets suffer dilution because the cash paid out by the fund for the shares redeemed is more than the per share value of the underlying securities, again due to the stale pricing utilized by Defendants. In both instances, when Defendants receive less cash when issuing and pay out more cash when redeeming market timing trader shares than supported by the value of their underlying foreign securities, the result is a dilution of Defendants' cash. Since the cash held by the fund is one of the assets that is valued in setting the Defendants' daily fund NAV, it follows that the diluted fund cash position causes the fund NAV to be diluted as well. Due to the stale pricing utilized by Defendants, long term buy and hold shareholders have incurred a dilution in the NAV of

their shares and the wealth represented by that diluted amount has been transferred to market timing traders.

39. By failing to make daily adjustments based upon positive correlations between upward movements in United States and foreign markets and by choosing to use stale prices in valuing the underlying foreign securities that are used setting their daily NAV, Defendants give market timing traders the opportunity to earn vastly higher returns at no additional risk. Unlike other market timing based trading, market timers who trade Defendants shares do not have to look into the future to time their purchases and redemptions of shares, rather, they have the luxury of being able to look backwards because Defendants' share pricing fails to adjust for recognized positive correlations and uses stale prices in valuing its underlying portfolio securities.

40. Since it is such an attractive low risk trading vehicle to market timers, Defendants' funds experience increased trading and transaction costs, disruption of planned investment strategies, forced and unplanned portfolio turnover including the liquidation of investments to meet market timer redemption requests, lost opportunity costs and asset swings that negatively impact fund operations and performance and the ability of the fund to provide a maximized return to long term shareholders.

41. Plaintiffs bring this complaint as a class action against Defendants PUTNAM FUNDS, PUTNAM FUND MANAGER, EVERGREEN FUNDS, EVERGREEN FUND MANAGER, and pursuant to § 5/2-801 et seq., of the Illinois Code of Civil Procedure individually and on behalf of a class of all persons in the United States who have owned shares in Putnam International Growth & Income or Evergreen International Growth for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ("long term shareholders"). The class period commences five years prior to the filing of this complaint through the date of filing. Excluded from the class are Defendants, any parent, subsidiary, affiliate, or controlled

person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this case.

42. Plaintiffs are members of the class and will fairly and adequately assert and protect the interests of the class. The interests of the Plaintiffs are coincident with, and not antagonistic to, those of other members of the class. Plaintiffs have retained attorneys who are experienced in class action litigation.

43. Members of the class are so numerous that joinder of all members is impracticable.

44. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

i. whether defendants failed to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International Growth & Income and Evergreen International Growth's portfolios of securities had occurred after the foreign home markets for such securities had closed but before the fund's NAV calculation and share price setting;

ii. whether defendants failed to properly implement Putnam International Growth & Income and Evergreen International Growth's portfolios valuation and share pricing policies and procedures making daily adjustments based upon United States market results and recognized positive correlations between upward movements in United States and foreign markets in the valuation of the fund's portfolio securities prior to the calculation of the fund NAV and setting of the share price;

iii. whether defendants failed to properly implement Putnam International Growth & Income and Evergreen International Growth's portfolio valuation

and share pricing policies and procedures making daily adjustments to stale closing prices of the underlying portfolio securities before the fund's NAV calculation and share price setting;

iv. whether defendants failed to properly implement Putnam International Growth & Income and Evergreen International Growth's portfolio valuation and share pricing policies so as to require the use of fair value pricing on a daily basis to value portfolio securities and fund NAV and share prices when closing prices of portfolio securities did not reflect their market values;

v. whether defendants failed to protect Putnam International Growth & Income and Evergreen International Growth's long term shareholders from market timing traders of fired shares who use Putnam International Growth & Income and Evergreen International Growth shares as a trading vehicle to earn profits at the expense of long term shareholders because of the failure of PUTNAM FUNDS, PUTNAM FUND MANAGER, EVERGREEN FUNDS AND EVERGREEN FUND MANAGER to make daily adjustments, based upon known United States market results and recognized positive correlations between upward movements in United States and foreign markets, prior to the daily calculation of the fund NAV and the setting of share prices as well as their use of stale prices in the valuation of the fund's portfolio securities prior to the daily calculation of the fund NAV and the setting of share prices;

vi. whether defendants breached the duties they owed to plaintiffs and the class;

vii. whether plaintiffs and the class have been damaged and, if so,

viii. the extent of such damages.

45. The prosecution of separate actions by individual members of the Class would create a risk of:

i. inconsistent or varying adjudications with respect to individual members of the class; and

ii. adjudication with respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

46. The class action method is appropriate for the fair and efficient prosecution of this action.

47. Individual litigation of all claims, which might be brought by all class members would produce a multiplicity of cases so that the judicial system would be congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising from the conduct of the defendants.

48. The certification of a class would allow litigation of claims that, in view of the expense of the litigation, may be insufficient in amount to support separate actions.

Count I

COMES NOW Plaintiff CARL KIRCHER, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for Count I of his Complaint against Defendants PUTNAM FUNDS TRUST and PUTNAM INVESTMENT MANAGEMENT, LLC, states as follows:

49. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 as if fully set forth herein.

50. Defendant PUTNAM FUNDS operates Putnam International Growth & Income as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its

investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

51. Defendant PUTNAM FUND MANAGER serves as the investment manager for Putnam International Growth & Income. Defendant PUTNAM FUND MANAGER provides, among other things, portfolio management services and selects the securities for Putnam International Growth & Income to buy, hold or sell. Putnam International Growth & Income pays Defendant PUTNAM FUND MANAGER set fees based on the percentage of assets under management for managing Putnam International Growth & Income's assets. Defendant PUTNAM FUND MANAGER's compensation and management of the Putnam International Growth & Income Fund are required to be reviewed and approved by Defendant Putnam Fund's board of trustees.

52. At all times relevant hereto, Plaintiff Kircher has owned shares in Putnam International Growth & Income.

53. In undertaking their role as investment managers with respect to the Funds, Defendants directly or impliedly held themselves out as skilled specialists in the field of investment management, possessing the knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

54. It thereby became the duty of Defendants to exercise that degree of knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

55. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities represented in the Putnam International Growth & Income Fund and used by Defendants to calculate NAV for said Fund did not represent fair value because, inter alia, those prices did not reflect changes in trading prices as a result of trading which Defendants knew, or were negligent in not knowing, occurred daily after the closing of the New York Stock Exchange.

56. Defendants breached their duties of due care owed to Plaintiff KIRCHER and similarly situated owners of the Putnam International Growth & Income Fund by, inter alia:

i. failing to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International Growth & Income's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

ii. failing to implement Putnam International Growth & Income's portfolio valuation and share pricing policies and procedures; and

iii. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Putnam International Growth & Income's shares at the expense of long term shareholders.

57. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff KIRCHER and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Defendants PUTNAM FUNDS TRUST and PUTNAM INVESTMENT MANAGEMENT, LLC, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Putnam International Growth & Income Fund or Evergreen International Growth Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from

five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFF DEMANDS TRIAL BY JURY

Count II

COMES NOW Plaintiff CARL KIRCHER, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for Count II of his Complaint against Defendants PUTNAM FUNDS TRUST and PUTNAM INVESTMENT MANAGEMENT, LLC, states as follows:

58. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 and 50 through 55 as if fully set forth herein.

59. On or about January 1, 1965, applicable published regulations expressly recognized that changes in trading prices of securities in the Putnam International Growth & Income Fund might occur daily after the closing of the New York Stock Exchange.

60. With utter indifference and conscious disregard for Plaintiff KIRCHER'S investment and the investments of similarly situated fund owners, Defendants willfully and wantonly breached their duties to Plaintiff KIRCHER and similarly situated owners by, inter alia:

i. failing to know and implement applicable rules and regulations concerning the calculation of NAV;

ii. failing to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International Growth & Income's portfolio of securities had occurred after the foreign trading

markets for such securities had closed but before Defendants calculated NAV and share prices;

iii. failing to implement Putnam International Growth & Income's portfolio valuation and share pricing policies and procedures; and

iv. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Putnam International Growth & Income's shares at the expense of long term shareholders.

61. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff KIRCHER and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Defendants PUTNAM FUNDS TRUST and PUTNAM INVESTMENT MANAGEMENT, LLC, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Putnam International Growth & Income Fund or Evergreen International Growth Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

Count III

COMES NOW Plaintiff ROBERT BROCKWAY, individually and on behalf of all others similarly situated, and for Count III of his Complaint against Defendants EVERGREEN FUNDS and EVERGREEN FUND MANAGER, states as follows:

62. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 as if fully set forth herein.

63. Defendant EVERGREEN FUNDS operates Evergreen International Fund as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

64. Defendant EVERGREEN FUND MANAGER serves as the investment manager for Evergreen International. Defendant EVERGREEN FUND MANAGER provides, among other things, portfolio management services and selects the securities for Evergreen International to buy, hold or sell. Evergreen International pays Defendant EVERGREEN FUND MANAGER set fees based on the percentage of assets under management for managing Evergreen International's assets. Defendant EVERGREEN FUND MANAGER's compensation and management of the Evergreen International Fund are required to be reviewed and approved by Defendant EVERGREEN FUNDS' board of trustees.

65. At all times relevant hereto, Plaintiff BROCKWAY has owned shares in Evergreen International.

66. In undertaking their role as investment managers with respect to the Funds, Defendants directly or impliedly held themselves out as skilled specialists in the field of investment management, possessing the knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

67. It thereby became the duty of Defendants to exercise that degree of knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

68. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities represented in the Evergreen International Fund and used by Defendants to calculate NAV for said Fund did not represent fair value because, inter alia, those prices did not reflect changes in trading prices as a result of trading which Defendants knew, or were negligent in not knowing, occurred daily after the closing of the New York Stock Exchange.

69. Defendants breached their duties of due care owed to Plaintiff BROCKWAY and similarly situated owners of the Evergreen International Fund by, inter alia:

i. failing to properly evaluate on a daily basis whether a significant event affecting the value of Evergreen International's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

ii. failing to implement Evergreen International's portfolio valuation and share pricing policies and procedures; and

iii. allowing portfolio valuation and share pricing policies and procedures which benefitted market timing traders of Evergreen International's shares at the expense of long term shareholders.

70. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff BROCKWAY and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Defendants EVERGREEN INTERNATIONAL TRUST and EVERGREEN INVESTMENT MANAGEMENT COMPANY, LLC, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Putnam International Growth & Income Fund or Evergreen International Growth Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

Count IV

COMES NOW Plaintiff ROBERT BROCKWAY, individually and on behalf of all others similarly situated, and for Count IV of his Complaint against Defendants EVERGREEN FUNDS and EVERGREEN FUND MANAGER, states as follows:

71. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 and 63 through 68 as if fully set forth herein.

72. On or about January 1, 1965, applicable published regulations expressly recognized that changes in trading prices of securities in the Evergreen International Fund might occur daily after the closing of the New York Stock Exchange.

73. With utter indifference and conscious disregard for Plaintiff BROCKWAY's investment and the investments of similarly situated fund owners, Defendants willfully and wantonly breached their duties to Plaintiff BROCKWAY and similarly situated owners by, inter alia:

i. failing to know and implement applicable rules and regulations concerning the calculation of NAV;

ii. failing to properly evaluate on a daily basis whether a significant event affecting the value of Evergreen International's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

iii. failing to implement Evergreen International's portfolio valuation and share pricing policies and procedures; and

iv. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Evergreen International's shares at the expense of long term shareholders.

74. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff Brockway and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Defendants EVERGREEN INTERNATIONAL TRUST and EVERGREEN INVESTMENT MANAGEMENT COMPANY, LLC, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

All persons in the United States who held shares in the Putnam International Growth & Income Fund

or Evergreen International Growth Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

[attorney name and address blocks omitted]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Cause No. 03-L-1253

T.K. PARTHASARATHY, EDMUND WOODBURY, STUART ALLEN SMITH, AND SHARON SMITH, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

T. ROWE PRICE INTERNATIONAL FUNDS, INC., A CORPORATION, T. ROWE PRICE INTERNATIONAL, INC., ARTISAN FUNDS, INC., A CORPORATION, ARTISAN PARTNERS LIMITED PARTNERSHIP, AIM INTERNATIONAL FUNDS, INC., A CORPORATION, AND AIM ADVISORS, INC.,

Defendants.

[Filed Oct. 3, 2003]

FIRST AMENDED COMPLAINT

COMES NOW Plaintiffs, T.K. PARTHASARATHY, EDMUND WOODBURY, STUART ALLEN SMITH, and SHARON SMITH, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for their complaint against Defendants T. ROWE PRICE INTERNATIONAL FUNDS, INC., T. ROWE PRICE INTERNATIONAL, INC., ARTISAN FUNDS, INC., ARTISAN PARTNERS LIMITED PARTNERSHIP, AIM INTERNATIONAL FUNDS, INC., and AIM ADVISORS, INC, state as follows:

1. Plaintiff T.K. PARTHASARATHY is a resident of Glen Carbon, Madison County, Illinois.

2. Plaintiff EDMUND WOODBURY is a resident of Godfrey, Madison County, Illinois.

3. Plaintiff STUART ALLEN SMITH is a resident of Shiloh, St. Clair County, Illinois.

4. Plaintiff SHARON SMITH is a resident of Shiloh, St. Clair County, Illinois.

5. Defendant T. ROWE PRICE INTERNATIONAL FUNDS, INC. ("T. ROWE PRICE FUNDS") is a Maryland corporation with its principal place of business in Baltimore, Maryland. T. ROWE PRICE FUNDS is the sponsor of the T. ROWE PRICE INTERNATIONAL STOCK FUND ("T. ROWE PRICE INTERNATIONAL"). Defendant T. ROWE PRICE FUNDS does business in the state of Illinois and is registered as a mutual fund in the state of Illinois. Defendant T. ROWE PRICE FUNDS has consented to the jurisdiction of Illinois courts. Defendant T. ROWE PRICE FUNDS at all times relevant herein has promoted, marketed, and sold shares to the investing public nationwide including the state of Illinois. Defendant T. ROWE PRICE FUNDS maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant T. ROWE PRICE FUNDS has significant contacts with Madison County, and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

6. Defendant T. ROWE PRICE FUND MANAGER ("T. ROWE PRICE FUND MANAGER") is a Maryland corporation with its principal place of business in Baltimore, Maryland. The day-to-day tasks associated with running the business of T. Rowe Price International, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and custodianship of funds, are contracted out since it has no significant number of internal employees. Defendant T. ROWE PRICE FUND MANAGER has been contracted to serve as the investment manager for the T. Rowe Price International. As the investment manager for T. Rowe Price International, Defendant T. ROWE PRICE FUND MANAGER selects

the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant T. ROWE PRICE FUND MANAGER has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of T. ROWE PRICE INTERNATIONAL business, and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant T. ROWE PRICE FUND MANAGER utilizes an interactive web site to communicate with fund shareholders, including those in Madison County, Illinois, regarding the performance of the Fund and the investments it manages.

7. Defendant ARTISAN FUNDS, INC. ("ARTISAN FUNDS") is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin. ARTISAN FUNDS is the sponsor of the ARTISAN INTERNATIONAL FUND ("ARTISAN INTERNATIONAL"). Defendant ARTISAN FUNDS does business in the state of Illinois and is registered as a mutual fund in the state of Illinois. Defendant ARTISAN FUNDS has consented to the jurisdiction of Illinois courts. Defendant ARTISAN FUNDS at all times relevant herein has promoted, marketed, and sold shares to the investing public nationwide including the state of Illinois. Defendant ARTISAN FUNDS maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant ARTISAN FUNDS has significant contacts with Madison County, and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

8. Defendant ARTISAN PARTNERS LIMITED PARTNERSHIP ("ARTISAN FUND MANAGER") is a Delaware partnership with its principal place of business in Milwaukee, Wisconsin. The day-to-day tasks associated with running the business of ARTISAN INTERNATIONAL, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and custodianship of funds, are contracted out since it has no significant number of internal employees. Defendant ARTISAN

FUND MANAGER has been contracted to serve as the investment manager for Artisan International. As the investment manager for ARTISAN INTERNATIONAL, Defendant ARTISAN FUND MANAGER selects the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant ARTISAN FUND MANAGER has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of Artisan International business, and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant ARTISAN FUND MANAGER utilizes an interactive website to communicate with fund shareholders, including those in Madison County, Illinois, regarding the performance of the Fund and the investments it manages.

9. Defendant AIM INTERNATIONAL FUNDS, INC. ("AIM FUNDS") is a Maryland corporation with its principal place of business in Houston, Texas. AIM FUNDS is the sponsor of the AIM EUROPEAN GROWTH FUND ("AIM EUROPEAN"). Defendant AIM FUNDS does business in the state of Illinois and is registered as a mutual fund in the state of Illinois. Defendant AIM FUNDS has consented to the jurisdiction of Illinois courts. Defendant AIM FUNDS at all times relevant herein has promoted, marketed, and sold shares to the investing public nationwide including the state of Illinois. Defendant AIM FUNDS maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant AIM FUNDS has significant contacts with Madison County, and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

10. Defendant AIM ADVISORS, INC. ("AIM FUND MANAGER") is a Delaware corporation with its principal place of business in Houston, Texas. The day-to-day tasks associated with running the business of AIM European, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and

custodianship of funds, are contracted out since it has no significant number of internal employees. Defendant AIM FUND MANAGER has been contracted to serve as the investment manager for the AIM European. As the investment manager for AIM European, Defendant AIM FUND MANAGER selects the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant AIM FUND MANAGER has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of AIM European business, and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant AIM FUND MANAGER utilizes an interactive website to communicate with fund shareholders, including those in Madison County, Illinois, regarding the performance of the Fund and the investments it manages.

11. At all times relevant herein, Plaintiff T.K. PARTHASARATHY has owned and held shares in the ARTISAN INTERNATIONAL FUND for the purpose of long term investing in international securities.

12. At all times relevant herein, Plaintiff EDMUND WOODBURY and has owned and held shares of T. Rowe Price International for the purpose of long term investing in international securities.

13. At all times relevant herein, Plaintiffs STUART ALLEN SMITH and SHARON SMITH have owned and held shares of AIM EUROPEAN for the purpose of long term investing in international securities.

14. This Court has jurisdiction over the subject matter and the parties pursuant to 735 ILCS 5/2-209.

15. Venue is proper in this Court pursuant to 735 ILCS 5/2-101.

16. The foreign securities purchased by Defendants' Funds for their portfolios are principally traded in securities markets outside of the United States.

17. Open end mutual funds such as Defendants' Funds have been tremendously successful in convincing investors such as plaintiffs to hold their fund shares by urging investors to invest for the long term and by effectively marketing the various advantages of long term ownership of funds over direct investment including professional management, diversification, and liquidity.

18. Shares of open end mutual funds are sold to investors such as Plaintiffs at a price based upon the net asset value ("NAV") per share plus applicable sales charges. Investors in shares may redeem their shares at the NAV of the shares less any redemption charges.

19. The share prices (NAV) of Defendants' mutual funds are set by deducting the fund liabilities from the total assets of the portfolio and then dividing by the number of outstanding shares.

20. Because the sales and redemption prices are based upon NAV, which in turn depends upon the fluctuating value of the fund's underlying portfolio of securities, Defendants recalculate the fund net asset value every business day. Defendants set the fund share price (NAV) once every business day at the close of trading on the New York Stock Exchange at 4:00 p.m. Eastern Time. The NAV of the shares is reported by Defendants to the National Association of Securities Dealers (NASD) for public distribution.

21. In valuing its underlying assets for purposes of setting the NAV, Defendants use the last trade price in the home market of each of the securities in its portfolio. A significant portion of the securities in the Defendants' portfolios are foreign securities. The home markets for such foreign securities include London, Paris, Frankfurt, Moscow, Singapore, Kuala Lumpur, Hong Kong, Taipei, Tokyo and Sydney. These markets are located in time zones that are five hours to fifteen hours ahead of Eastern Standard Time.

22. Studies of world financial markets have established associations between the value changes among various markets. There is a positive correlation between value movements in the United States market and value movements in foreign markets. If the United States market experiences an upward movement in values, it can be predicted that Asian markets will move upward once trading begins their next day. The same upward movement can be predicted for European markets once trading begins their next day. Similarly, if the United States market experiences a downward movement in values, it can be predicted that Asian and European markets will move downward once trading begins their next day. Because of these positive correlations, the closing prices of the foreign securities in the underlying portfolio may not reflect current market values at the time Defendants set their fund NAV. Appropriate adjustments need to be made to the closing prices of the foreign securities in order to reflect current market values. Despite knowledge of the United States market result, the positive correlations and the stale price of the foreign securities in its underlying portfolio, Defendants do not make any value adjustment to the portfolio's foreign securities prior to calculating fund NAV and setting share price every business day.

23. The positive correlation between the upward or downward movement of value in the United States market and subsequent movements in foreign markets around the world is between 0.7 and 0.8. A value of 0.0 equates to absolutely no correlation between value movements in United States markets and subsequent movements in foreign markets. A value of 1.0 equates to an absolute correlation between value movements in United States markets and subsequent value movements in foreign markets.

24. Studies of world financial markets demonstrate that the greater the percentage increase or decrease in the value of United States markets, the more likely foreign markets will post corresponding value movements on subsequent days. The probability that the value movements

of foreign markets will follow the previous day's value movements in United States markets is directly correlated with the degree or extent of the value movement of United States markets.

25. Since many of the home markets for the foreign securities in the Defendants' asset portfolio last traded hours before the setting at 4:00 p.m. Eastern of the fund NAV, the closing prices used to calculate the NAV of Defendants' funds are stale and do not reflect price relevant information available subsequent to the foreign security's last trade that will affect the value of such security.

26. During the interval that elapses between the time that Defendants set their share NAV (and release it to the NASD for communication to the public) on consecutive days, the securities markets in Australia, Japan, Taiwan, Hong Kong, Malaysia, Singapore, Russia, Germany, France and the United Kingdom have traded for an entire session from open to close.

27. The exchange located in Sydney, Australia observes normal market trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

28. The exchange located in Tokyo, Japan observes normal trading hours of 9:00 a.m. to 3:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 3:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

29. The exchange located in Taipei, Taiwan observes normal trading hours of 9:00 a.m. to 1:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 1:30 p.m. local time (1:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14.5 hours.

30. The exchange located in Hong Kong observes normal trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (4:00 a.m. Eastern time). When Defendants calculate its fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 12 hours.

31. The exchange located in Kuala Lumpur, Malaysia observes normal trading hours of 9:30 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

32. The exchange located in Singapore observes normal trading hours of 9:00 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

33. The exchange located in Moscow, Russia observes normal trading hours of 12:00 p.m. to 7:00 p.m. local time.

Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 7:00 p.m. local time (11:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 5 hours.

34. The exchange located in Frankfurt, Germany observes normal trading hours of 9:00 a.m. to 8:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 8:00 p.m. local time (2:00 p.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 2 hours.

35. The exchange located in Paris, France observes normal trading hours of 9:00 a.m. to 5:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at, 5:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV, using closing prices from this exchange Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

36. The exchange located in London, England observes normal market hours of 8:00 a.m. to 4:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at 4:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

37. A significant portion of the underlying foreign securities in the Defendants' portfolios are listed on foreign exchanges and trade during each market's respective ses-

sion. The NAVs set by Defendants do not take into account on a daily basis any price relevant information that has become available in this two to fourteen and one/half hour interval, after the final prices for the underlying foreign securities have been posted but, prior to the setting of the NAVs. Such price relevant information impacts the valuation of these underlying foreign securities and is significant for valuation because the final market prices have become stale and do not reflect the current market value of the securities.

38. By failing to make daily adjustments based upon positive correlations between upward or downward movements in United States and foreign markets and by choosing to use stale prices in valuing their fund shares and setting their daily NAVs, Defendants have exposed long term shareholders to market timing traders who regularly purchase and redeem Defendants' shares as part of a profitable trading strategy. The market timing trading strategy stems from the ability of market timing traders to predict changes in the NAV. Market timing traders are able to predict changes in the NAV because of the positive correlations between value movements in United States markets and foreign markets. The stale price strategy of market timers who trade Defendants' shares is to buy shares on days when the United States market moves up and to sell (redeem) shares when the United States market moves down. In order to derive maximum benefit from price relevant information developed subsequent to the now stale closing prices of the portfolio securities, market timers wait until the fund deadline for buying or selling (redeeming) shares in Defendants' funds on any particular business day. Because Defendants cannot buy or sell the foreign securities in the funds' underlying portfolio (due to the time difference between New York and the home markets of the foreign securities) at the time it sets the daily NAV that values the shares it issues and redeems, the shares that Defendants issue to and redeem from market timers do not reflect current market prices of the foreign securities held by the fund.

39. Due to the use of stale prices by Defendants in valuing the fund shares, market timers who buy Defendants' funds' shares on days when the United States market moves up are buying discounted shares at the expense of other fund shareholders because the funds underlying foreign securities assets are undervalued as of the time of the share purchase.

40. Due to the use of stale prices by Defendants in valuing their fund shares, market timers who sell (redeem) Defendants' shares on days when the United States market moves down are selling (redeeming) shares at a premium at the expense of other fund shareholders because the underlying foreign securities assets are overvalued as of the time of the share sale (redemption).

41. Shares in Defendants' funds can be traded, either by purchase or redemption, only once a day at 4:00 p.m. Eastern Time.

42. The excess profits that are obtained by market timing traders' taking advantage of the stale pricing of Defendants' shares come at the expense of fellow shareholders who are non-trading long term buy and hold investors. The transfer of wealth from the non-trading long term buy and hold shareholders to the market timers trading Defendants shares in Defendants' funds occurs through dilution.

43. Market timing traders pay cash to Defendants funds when they purchase discounted shares. Market timing traders receive cash from Defendants funds when they sell (redeem) their shares at a premium. Defendants' fund NAV is diluted in both instances. When market timing traders are able to buy shares at a discount, Defendants' fund assets suffer dilution because the cash received by the fund for the shares purchased is less than the per share value of the underlying foreign securities because of the stale pricing utilized by Defendants. Likewise, when market timing traders are able to sell (redeem) shares at a premium, Defendants' fund assets suffer dilution because

the cash paid out by the fund for the shares redeemed is more than the per share value of the underlying securities, again due to the stale pricing utilized by Defendants. In both instances, when Defendants receive less cash when issuing and pay out more cash when redeeming market timing trader shares than supported by the value of their underlying foreign securities, the result is a dilution of Defendants' cash. Since the cash held by the fund is one of the assets that is valued in setting the Defendants' daily fund NAV, it follows that the diluted fund cash position causes the fund NAV to be diluted as well. Due to the stale pricing utilized by Defendants, long term buy and hold shareholders have incurred a dilution in the NAV of their shares and the wealth represented by that diluted amount has been transferred to market timing traders.

44. By failing to make daily adjustments based upon positive correlations between upward movements in United States and foreign markets and by choosing to use stale prices in valuing the underlying foreign securities that are used setting their daily NAV, Defendants give market timing traders the opportunity to earn vastly higher returns at no additional risk. Unlike other market timing based trading, market timers who trade Defendants shares do not have to look into the future to time their purchases and redemptions of shares, rather, they have the luxury of being able to look backwards because Defendants' share pricing fails to adjust for recognized positive correlations and uses stale prices in valuing its underlying portfolio securities.

45. Since it is such an attractive low risk trading vehicle to market timers, Defendants' funds experience increased trading and transaction costs, disruption of planned investment strategies, forced and unplanned portfolio turnover including the liquidation of investments to meet market timer redemption requests, lost opportunity costs and asset swings that negatively impact fund operations and performance and the ability of the fund to provide a maximized return to long term shareholders.

46. Plaintiffs bring this complaint as a class action against Defendants T. ROWE PRICE FUNDS, T. ROWE PRICE FUND MANAGER, ARTISAN FUNDS, ARTISAN FUND MANAGER, AIM FUNDS, AND AIM FUND MANAGER, and pursuant to § 5/2-801 *et seq.*, of the Illinois Code of Civil Procedure individually and on behalf of a class of all persons in the United States who have owned shares T. ROWE PRICE INTERNATIONAL, ARTISAN INTERNATIONAL, AND AIM EUROPEAN GROWTH for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ("long term shareholders"). The class period commences five years prior to the filing of this complaint through the date of filing. Excluded from the class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this case.

47. Plaintiffs are members of the class and will fairly and adequately assert and protect the interests of the class. The interests of the Plaintiffs are coincident with, and not antagonistic to, those of other members of the class. Plaintiffs have retained attorneys who are experienced in class action litigation.

48. Members of the class are so numerous that joinder of all members is impracticable.

49. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

i. whether defendants failed to properly evaluate on a daily basis whether a significant event affecting the value of T. Rowe Price International, Artisan International and AIM European Growth's portfolios of securities had occurred after the foreign home markets for such securities had closed but before the fund's NAV calculation and share price setting;

ii. whether defendants failed to properly implement T. Rowe Price International, Artisan International and AIM European Growth's portfolios valuation and share pricing policies and procedures making daily adjustments based upon United States market results and recognized positive correlations between upward movements in United States and foreign markets in the valuation of the fund's portfolio securities prior to the calculation of the fund NAV and setting of the share price;

iii. whether defendants failed to properly implement T. Rowe Price International, Artisan International and AIM European Growth's portfolios valuation and share pricing policies and procedures making daily adjustments to stale closing prices of the underlying portfolio securities before the fund's NAV calculation and share price setting;

iv. whether defendants failed to properly implement T. Rowe Price International, Artisan International and AIM European Growth's portfolios valuation and share pricing policies so as to require the use of fair value pricing on a daily basis to value portfolio securities and fund NAV and share prices when closing prices of portfolio securities did not reflect their market values;

v. whether defendants failed to protect T. Rowe Price International, Artisan International and AIM European Growth's long term shareholders from market timing traders of fund shares who use T. Rowe Price International, Artisan International and AIM European Growth's shares as a trading vehicle to earn profits at the expense of long term shareholders because of the failure of T. ROWE PRICE FUNDS, T. ROWE PRICE FUND MANAGER, ARTISAN FUNDS, ARTISAN FUND MANAGER, AIM FUNDS, and AIM FUND MANAGER to make daily adjustments, based upon known United States market results and recognized positive correlations be-

tween upward movements in United States and foreign markets, prior to the daily calculation of the fund NAV and the setting of share prices as well as their use of stale prices in the valuation of the fund's portfolio securities prior to the daily calculation of the fund NAV and the setting of share prices;

vi. whether defendants breached the duties they owed to plaintiffs and the class;

vii. whether plaintiffs and the class have been damaged and, if so,

viii. the extent of such damages.

50. The prosecution of separate actions by individual members of the Class would create a risk of:

i. inconsistent or varying adjudications with respect to individual members of the class; and

ii. adjudication with respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

51. The class action method is appropriate for the fair and efficient prosecution of this action.

52. Individual litigation of all claims, which might be brought by all class members would produce a multiplicity of cases so that the judicial system would be congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising from the conduct of the defendants.

Count I

COMES NOW Plaintiff T.K. PARTHASARATHY, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for Count I of his

Complaint against Defendants ARTISAN FUNDS and ARTISAN FUND MANAGER, states as follows:

53. Plaintiff repeats and incorporates by reference paragraphs 1 through 55 as if fully set forth herein.

54. Defendant ARTISAN FUNDS operates ARTISAN INTERNATIONAL FUND as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

55. Defendant ARTISAN FUND MANAGER serves as the investment manager for Artisan International. Defendant ARTISAN FUND MANAGER provides, among other things, portfolio management services and selects the securities for ARTISAN INTERNATIONAL to buy, hold or sell. ARTISAN INTERNATIONAL pays Defendant ARTISAN FUND MANAGER set fees based on the percentage of assets under management for managing Artisan International's assets. Defendant ARTISAN FUND MANAGER's compensation and management of the Artisan International Fund are required to be reviewed and approved by Defendant ARTISAN FUNDS' board of directors.

56. At all times relevant hereto, Plaintiff Parthasarathy has owned shares in Artisan International.

57. In undertaking their role as investment managers with respect to the Funds, Defendants directly or impliedly held themselves out as skilled specialists in the field of investment management, possessing the knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

58. It thereby became the duty of Defendants to exercise that degree of knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

59. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities represented in the Artisan International Fund and used by Defendants to calculate NAV for said Fund did not represent fair value because, inter alia, those prices did not reflect changes in trading prices as a result of trading which Defendants knew, or were negligent in not knowing, occurred daily after the closing of the New York Stock Exchange.

60. Defendants breached their duties of due care owed to Plaintiff Parthasarathy and similarly situated owners of the Artisan International Fund by, inter alia:

i. failing to properly evaluate on a daily basis whether a significant event affecting the value of Artisan International's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

ii. failing to implement Artisan International's portfolio valuation and share pricing policies and procedures; and

iii. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Artisan International's shares at the expense of long term shareholders.

61. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff Parthasarathy and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against ARTISAN FUNDS, INC. and ARTISAN PARTNERS LIMITED PARTNERSHIP, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the T. Rowe Price International Stock Fund, Artisan International Fund or AIM European Growth, for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiff and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

Count II

COMES NOW Plaintiff T.K. PARTHASARATHY, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for Count II of his Complaint against Defendants ARTISAN FUNDS and ARTISAN FUND MANAGER, states as follows:

62. Plaintiff repeats and incorporates by reference paragraphs 1 through 52 and 54 through 59 as if fully set forth herein.

63. On or about January 1, 1965, applicable published regulations expressly recognized that changes in trading prices of securities in the Artisan International Fund might occur daily after the closing of the New York Stock Exchange.

64. With utter indifference and conscious disregard for Plaintiff Parthasarathy's investment and the investments of similarly situated fund owners, Defendants willfully and wantonly breached their duties to Plaintiff Parthasarathy and similarly situated owners by, inter alia:

i. failing to know and implement applicable rules and regulations concerning the calculation of NAV;

ii. failing to properly evaluate on a daily basis whether a significant event affecting the value of Artisan International's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

iii. failing to implement Artisan International's portfolio valuation and share pricing policies and procedures; and

iv. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Artisan International's shares at the expense of long term shareholders.

65. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff Parthasarathy and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against ARTISAN FUNDS, INC. and ARTISAN PARTNERS LIMITED PARTNERSHIP, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the T. Rowe Price International Stock Fund, Artisan International Fund, or AIM European Growth, for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiff and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

Count III

COMES NOW Plaintiff EDMUND WOODBURY, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for Count III of his Complaint against Defendants T. ROWE PRICE FUNDS and T. ROWE PRICE FUND MANAGER, states as follows:

66. Plaintiff repeats and incorporates by reference paragraphs 1 through 52 as if fully set forth herein.

67. Defendant T. Rowe Price Funds operates T. Rowe Price International Fund as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

68. Defendant T. Rowe Price Fund Manager serves as the investment manager for T. Rowe Price International. Defendant T. Rowe Price Fund Manager provides, among other things, portfolio management services and selects the securities for T. Rowe Price International to buy, hold or sell. T. Rowe Price International pays Defendant T. Rowe Price Fund Manager set fees based on the percentage of assets under management for managing T. Rowe Price International's assets. Defendant T. Rowe Price Fund Manager's compensation and management of the T. Rowe Price International Fund are required to be reviewed and approved by Defendant T. Rowe Price Funds' board of directors.

69. At all times relevant hereto, Plaintiff Woodbury has owned shares in T. Rowe Price International.

70. In undertaking their role as investment managers with respect to the Funds, Defendants directly or impliedly held themselves out as skilled specialists in the field of investment management, possessing the knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

71. It thereby became the duty of Defendants to exercise that degree of knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

72. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities represented in the T. Rowe Price International Fund and used by Defendants to calculate NAV for said Fund did not represent fair value because, inter alia, those prices did not reflect changes in trading prices as a result of trading which Defendants knew, or were negligent in not knowing, occurred daily after the closing of the New York Stock Exchange.

73. Defendants breached their duties of due care owed to Plaintiff Woodbury and similarly situated owners of the T. Rowe Price International Fund by, inter alia:

i. failing to properly evaluate on a daily basis whether a significant event affecting the value of T. Rowe Price International's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

ii. failing to implement T. Rowe Price International's portfolio valuation and share pricing policies and procedures; and

iii. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of T. Rowe Price International's shares at the expense of long term shareholders.

74. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff Woodbury and the class

have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against T. ROWE PRICE INTERNATIONAL FUNDS, INC. and T. ROWE PRICE FUND MANAGER, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the T. Rowe Price International Stock Fund, Artisan International Fund, or AIM European Growth, for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiff and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

Count IV

COMES NOW Plaintiff EDMUND WOODBURY, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for Count IV of his Complaint against Defendants T. ROWE PRICE FUNDS and T. ROWE PRICE FUND MANAGER, states as follows:

75. Plaintiff repeats and incorporates by reference paragraphs 1 through 52 and 67 through 72 as if fully set forth herein.

76. On or about January 1, 1965, applicable published regulations expressly recognized that changes in trading prices of securities in the T. Rowe Price International

Fund might occur daily after the closing of the New York Stock Exchange.

77. With utter indifference and conscious disregard for Plaintiff Woodbury's investment and the investments of similarly situated fund owners, Defendants willfully and wantonly breached their duties to Plaintiff Woodbury and similarly situated owners by, inter alia:

i. failing to know and implement applicable rules and regulations concerning the calculation of NAV;

ii. failing to properly evaluate on a daily basis whether a significant event affecting the value of T. Rowe Price International's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

iii. failing to implement T. Rowe Price International's portfolio valuation and share pricing policies and procedures; and

iv. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of T. Rowe Price International's shares at the expense of long term shareholders.

78. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff Woodbury and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against T. ROWE PRICE INTERNATIONAL FUNDS, INC. and T. ROWE PRICE FUND MANAGER, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

All persons in the United States who held shares in the T. Rowe Price International Stock Fund, Artisan

International Fund, or AIM European Growth, for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiff and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

Count V

COMÉ NOW Plaintiffs STUART ALLEN SMITH and SHARON SMITH, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for Count V of their Complaint against Defendants AIM FUNDS and AIM FUND MANAGER, state as follows:

79. Plaintiffs repeat and incorporate by reference paragraphs 1 through 52 as if fully set forth herein.

80. Defendant AIM Funds operates AIM European Fund as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

81. Defendant AIM Fund Manager serves as the investment manager for AIM International. Defendant AIM Fund Manager provides, among other things, portfolio management services and selects the securities for AIM European to buy, hold or sell. AIM European pays Defendant AIM Fund Manager set fees based on the percentage of assets under management for managing AIM European's assets. Defendant AIM Fund Manager's compensation and management of the AIM European Fund are re-

quired to be reviewed and approved by Defendant AIM Funds' board of directors.

82. At all times relevant hereto, Plaintiffs Stuart Allen and Sharon Smith have owned shares in AIM European.

83. In undertaking their role as investment managers with respect to the Funds, Defendants directly or impliedly held themselves out as skilled specialists in the field of investment management, possessing the knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

84. It thereby became the duty of Defendants to exercise that degree of knowledge, skill and care ordinarily used by reasonably well-qualified members of their profession.

85. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities represented in the AIM European Fund and used by Defendants to calculate NAV for said Fund did not represent fair value because, inter alia, those prices did not reflect changes in trading prices as a result of trading which Defendants knew, or were negligent in not knowing, occurred daily after the closing of the New York Stock Exchange.

86. Defendants breached their duties of due care owed to Plaintiffs Stuart Allen and Sharon Smith and similarly situated owners of the AIM European Fund by, inter alia:

i. failing to properly evaluate on a daily basis whether a significant event affecting the value of AIM European's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

ii. failing to implement AIM European's portfolio valuation and share pricing policies and procedures; and

iii. allowing portfolio valuation and share pricing policies and procedures which benefited market timing

traders of AIM European's shares at the expense of long term shareholders.

87. As a direct and proximate result of the Defendants' breach of their duties, Plaintiffs Stuart Allen and Sharon Smith and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against AIM INTERNATIONAL FUNDS, INC. and AIM ADVISORS, INC., as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the T. Rowe Price International Stock Fund, Artisan International Fund, or AIM European Growth for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

Count VI

COME NOW Plaintiffs STUART ALLEN SMITH and SHARON SMITH, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for Count VI of their Complaint against Defendants AIM FUNDS and AIM FUND MANAGER, state as follows:

88. Plaintiffs repeat and incorporate by reference paragraphs 1 through 52 and 80 through 85 as if fully set forth herein.

89. On or about January 1, 1965, applicable published regulations expressly recognized that changes in trading prices of securities in the AIM European Fund might occur daily after the closing of the New York Stock Exchange.

90. With utter indifference and conscious disregard for Plaintiffs Stuart Allen and Sharon Smith's investment and the investments of similarly situated fund owners, Defendants willfully and wantonly breached their duties to Plaintiffs Stuart Allen and Sharon Smith and similarly situated owners by, inter alia:

i. failing to know and implement applicable rules and regulations concerning the calculation of NAV;

ii. failing to properly evaluate on a daily basis whether a significant event affecting the value of AIM European's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

iii. failing to implement AIM European's portfolio valuation and share pricing policies and procedures; and

iv. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of AIM European's shares at the expense of long term shareholders.

91. As a direct and proximate result of the Defendants' breach of their duties, Plaintiffs Stuart Allen and Sharon Smith and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against AIM

INTERNATIONAL FUNDS, INC. and AIM ADVISORS, INC., as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the T. Rowe Price International Stock Fund, Artisan International Fund, or AIM European Growth for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

[attorney name and address blocks omitted]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Cause No. 03-L-1539

STEVE AND BETH DUDLEY,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,
Plaintiffs,

v.

PUTNAM INTERNATIONAL EQUITY FUND AND
PUTNAM INVESTMENT MANAGEMENT, LLC,
Defendants.

[Filed Nov. 10, 2003]

COMPLAINT

Plaintiffs, Steve and Beth Dudley, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for their complaint against Defendants Putnam International Equity Fund and Putnam Investment Management, LLC, state as follows:

1. Plaintiffs, Steve and Beth Dudley, are residents of East Alton, Madison County, Illinois.

2. Defendant, Putnam International Equity Fund ("Putnam International Funds"), is a Massachusetts business trust with its principal place of business in Boston, Massachusetts. Putnam International Fund is the registrant of the Putnam International Growth Fund ("Putnam International Equity Fund"), which is now known as the Putnam International Equity Fund. Defendant Putnam International Fund does business in the state of Illinois and is registered as a mutual fund in the State of Illinois. Defendant, Putnam International Fund, has consented to

the jurisdiction of Illinois courts. Defendant Putnam International Fund at all times relevant herein has promoted, marketed, and sold shares to the investing public nationwide including the state of Illinois. Defendant Putnam International Fund maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant Putnam International Fund has significant contacts with Madison County and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

3. Defendant, Putnam Investment Management, LLC ("Putnam Fund Manager") is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. The day-to-day tasks associated with running the business of Putnam International Equity Fund, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and custodianship of funds are contracted out since it has no significant number of internal employees. Defendant Putnam Fund Manager has been contracted to serve as the investment manager for the Putnam International Equity Fund. As the investment manager for Putnam International Equity Fund, Defendant Putnam Fund Manager selects the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant Putnam Fund Manager has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of Putnam International Equity Fund business and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant Putnam Fund Manager utilizes an interactive web site to communicate with fund shareholders, including those in Madison County, Illinois regarding the performance of the Fund and the investments it manages.

4. At all times relevant herein, Plaintiffs, Steve and Beth Dudley, have owned and held shares in the Putnam

International Equity Fund for the purpose of long term investing in international securities.

5. This Court has jurisdiction over the subject matter and the parties pursuant to 735 ILCS 5/2-209.

6. Venue is proper in this Court pursuant to 735 ILCS 5/2-101.

7. The foreign securities purchased by Defendants' fund for its portfolio are principally traded in securities markets outside of the United States.

8. Open end mutual funds such as Defendants' fund have been tremendously successful in convincing investors such as Plaintiffs to hold their fund shares by urging investors to invest for the long term and by effectively marketing the various advantages of long term ownership of funds over direct investment including professional management, diversification, and liquidity.

9. Shares of open end mutual funds are sold to investors such as Plaintiffs at a price based upon the net asset value ("NAV") per share plus applicable sales charges. Investors in shares may redeem their shares at the NAV of the shares less any redemption charges.

10. The share prices (NAV) of Defendants' mutual funds are set by deducting the fund liabilities from the total assets of the portfolio and then dividing by the number of outstanding shares.

11. Because the sales and redemption prices are based upon NAV, which in turn depends upon the fluctuating value of the fund's underlying portfolio of securities, Defendants recalculate the fund net asset value every business day. Defendants set the fund share price (NAV) once every business day at the close of trading on the New York Stock Exchange at 4:00 p.m. Eastern Time. The NAV of the shares is reported by Defendants to the National Association of Securities Dealers (NASD) for public distribution.

12. In valuing its underlying assets for purposes of setting the NAV, Defendants use the last trade price in the

home market of each of the securities in its portfolio. A significant portion of the securities in the Defendants' fund portfolio are foreign securities. The home markets for such foreign securities include London, Paris, Frankfurt, Moscow, Singapore, Kuala Lumpur, Hong Kong, Taipei, Tokyo and Sydney. These markets are located in time zones that are five hours to fifteen hours ahead of Eastern Standard Time.

13. Studies of world financial markets have established associations between the value changes among various markets. There is a positive correlation between value movements in the United States market and value movements in foreign markets. If the United States market experiences an upward movement in values, it can be predicted that Asian markets will move upward once trading begins their next day. The same upward movement can be predicted for European markets once trading begins their next day. Similarly, if the United States market experiences a downward movement in values, it can be predicted that Asian and European markets will move downward once trading begins their next day. Because of these positive correlations, the closing prices of the foreign securities in the underlying portfolio may not reflect current market values at the time Defendants set their fund NAV. Appropriate adjustments need to be made to the closing prices of the foreign securities in order to reflect current market values. Despite knowledge of the United States market result, continuous trading of the world equity indexes, ADRs, foreign currency futures markets and the correlations between the value of the fund's securities and these benchmarks, Defendants do not make any value adjustment to the portfolio's foreign securities prior to calculating fund NAV and setting share price every business day.

14. The positive correlation between the upward or downward movement of value in the United States market and subsequent movements in foreign markets around the world is between 0.7 and 0.8. A value of 0.0 equates to absolutely no correlation between value movements in United States markets and subsequent movements in for-

eign markets. A value of 1.0 equates to an absolute correlation between value movements in United States markets and subsequent value movements in foreign markets.

15. Studies of world financial markets demonstrate that the greater the percentage increase or decrease in the value of United States markets, the more likely foreign markets will post corresponding value movements on subsequent days. The probability that the value movements of foreign markets will follow the previous day's value movements in United States markets is directly correlated with the degree or extent of the value movement of United States markets.

16. Because many of the home markets for the foreign securities in the Defendants' asset portfolio last traded hours before the setting at 4:00 p.m. Eastern of the fund NAV, the closing prices used to calculate the NAV of Defendants' fund are stale and do not reflect price relevant information available subsequent to the foreign securities' last trades that will affect the value of such securities.

17. During the interval that elapses between the time that Defendants set the share NAV (and release it to the NASD for communication to the public) on consecutive days, the securities markets in Australia, Japan, Taiwan, Hong Kong, Malaysia, Singapore, Russia, Germany, France and the United Kingdom have traded for an entire session from open to close.

18. The exchange located in Sydney, Australia observes normal market trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

19 The exchange located in Tokyo, Japan observes normal trading hours of 9:00 a.m. to 3:00 p.m. local time. Active trading of securities traded on this exchange ends,

and closing prices for those securities are posted, at 3:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

20. The exchange located in Taipei, Taiwan observes normal trading hours of 9:00 a.m. to 1:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 1:30 p.m. local time (1:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14.5 hours.

21. The exchange located in Hong Kong observes normal trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (4:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 12 hours.

22. The exchange located in Kuala Lumpur, Malaysia observes normal trading hours of 9:30 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

23. The exchange located in Singapore observes normal trading hours of 9:00 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants cal-

culate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

24. The exchange located in Moscow, Russia observes normal trading hours of 12:00 p.m. to 7:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 7:00 p.m. local time (11:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 5 hours.

25. The exchange located in Frankfurt, Germany observes normal trading hours of 9:00 a.m. to 8:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 8:00 p.m. local time (2:00 p.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 2 hours.

26. The exchange located in Paris, France observes normal trading hours of 9:00 a.m. to 5:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at, 5:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV, using closing prices from this exchange Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

27. The exchange located in London, England observes normal market hours of 8:00 a.m. to 4:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at 4:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for se-

curities traded on this exchange that have been static for 4.5 hours.

28. A significant portion of the underlying foreign securities in the Defendants' fund portfolio are listed on foreign exchanges and trade during each market's respective session. The NAVs set by Defendants do not take into account on a daily basis any price relevant information that has become available in this two to fourteen and one/half hour interval, after the final prices for the underlying foreign securities have been posted but, prior to the setting of the NAVs. Price relevant information, such as the continuous trading of world equity market indexes, ADRs, and foreign currency futures impacts the valuation of these underlying foreign securities and is significant for valuation because the final market prices have become stale and do not reflect the current market value of the securities.

29. By failing to make daily adjustments based upon positive correlations between upward or downward movements in United States and foreign markets and by choosing to use stale prices in valuing their fund shares and setting their daily NAVs, Defendants have exposed long term shareholders to market timing traders who regularly purchase and redeem Defendants' shares as part of a profitable trading strategy. The market timing trading strategy stems from the ability of market timing traders to predict changes in the NAV. Market timing traders are able to predict changes in the NAV because of the positive correlations between value movements in United States markets and foreign markets. The stale price strategy of market timers who trade Defendants' fund shares is to buy shares on days when the United States market moves up and to sell (redeem) shares when the United States market moves down. In order to derive maximum benefit from price relevant information developed subsequent to the now stale closing prices of the portfolio securities, market timers wait until the fund deadline for buying or selling (redeeming) shares in Defendants' funds on any particular

business day. Because Defendants cannot buy or sell the foreign securities in the fund's underlying portfolio (due to the time difference between New York and the home markets of the foreign securities) at the time it sets the daily NAV that values the shares it issues and redeems, the shares that Defendants issue to and redeem from market timers do not reflect current market prices of the foreign securities held by the fund.

30. Due to the use of stale prices by Defendants in valuing the fund shares, market timers who buy Defendants' fund shares on days when the United States market moves up are buying discounted shares at the expense of other fund shareholders because the funds underlying foreign securities assets are undervalued as of the time of the share purchase.

31. Due to the use of stale prices by Defendants in valuing their fund shares, market timers who sell (redeem) Defendants' fund shares on days when the United States market moves down are selling (redeeming) shares at a premium at the expense of other fund shareholders because the underlying foreign securities assets are overvalued as of the time of the share sale (redemption).

32. Shares in Defendants' fund can be traded, either by purchase or redemption, only once a day at 4:00 p.m. Eastern Time.

33. The excess profits that are obtained by market timing traders' taking advantage of the stale pricing of Defendants' fund shares come at the expense of fellow shareholders who are non-trading long term buy and hold investors. The transfer of wealth from the non-trading long term buy and hold shareholders to the market timers trading Defendants' fund shares occurs through dilution.

34. Market timing traders pay cash to Defendants' fund when they purchase discounted shares. Market timing traders receive cash from Defendants' fund when they sell (redeem) their shares at a premium. Defendants' fund NAV is diluted in both instances. When market timing

traders are able to buy shares at a discount, Defendants' fund assets suffer dilution because the cash received by the fund for each of the shares purchased is less than the per share value of the underlying foreign securities due to the stale pricing method utilized by Defendants. Likewise, when market timing traders are able to sell (redeem) shares at a premium, Defendants' fund assets suffer dilution because the cash paid out by the fund for each of the shares redeemed is more than the per share value of the underlying securities, again due to the stale pricing method utilized by Defendants. In both instances, when Defendants receive less cash when issuing and pay out more cash when redeeming market timing trader shares than supported by the value of their underlying foreign securities, the result is a dilution of Defendants' fund's cash. Since the cash held by the fund is one of the assets that is valued in setting the Defendants' daily fund NAV, it follows that the diluted fund cash position causes the fund NAV to be diluted as well. Due to the stale pricing utilized by Defendants, long term buy and hold shareholders have incurred a dilution in the NAV of their shares and the wealth represented by that diluted amount has been transferred to market timing traders.

35. By failing to make daily adjustments based upon positive correlations between upward movements in United States and foreign markets, world equity index market trading, ADRs, and foreign currency futures and by choosing to use stale prices in valuing the underlying foreign securities that are used setting their daily NAV, Defendants give market timing traders the opportunity to earn vastly higher returns at no additional risk. Unlike other market timing based trading, market timers who trade Defendants' shares do not have to look into the future to time their purchases and redemptions of shares, rather, they have the luxury of being able to look backwards because Defendants' share pricing fails to adjust for recognized positive correlations and uses stale prices in valuing its underlying portfolio securities.

36. Since it is such an attractive low risk trading vehicle to market timers, Defendants' fund experiences increased trading and transaction costs, disruption of planned investment strategies, forced and unplanned portfolio turnover including the liquidation of investments to meet market timer redemption requests, lost opportunity costs and asset swings that negatively impact fund operations, performance and the ability of the fund to provide a maximized return to long term shareholders.

37. Plaintiffs bring this complaint as a class action against Defendants Putnam International Equity Fund and Putnam Investment Management, LLC, and pursuant to § 5/2-801 et seq., of the Illinois Code of Civil Procedure individually and on behalf of a class of all persons in the United States who have held shares of Putnam International Equity Fund for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ("long term shareholders"). The class period commences five years prior to the filing of this complaint through the date of filing. Excluded from the class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family members of any such person. Also excluded is any judge who may preside over this case.

38. Plaintiffs are members of the class and will fairly and adequately assert and protect the interests of the class. The interest of the Plaintiffs is coincident with, and not antagonistic to, those of other members of the class. Plaintiffs have retained attorneys who are experienced in class action litigation.

39. Members of the class are so numerous that joinder of all members is impracticable.

40. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a. whether defendants failed to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International Equity Fund's portfolio of securities had occurred after the foreign home markets for such securities had closed but before the fund's NAV calculation and share price setting;

b. whether defendants failed to properly implement Putnam International Equity Fund's portfolio valuation and share pricing policies and procedures making daily adjustments based upon United States market results and recognized positive correlations between upward movements in United States and foreign markets in the valuation of the fund's portfolio securities prior to the calculation of the fund NAV and setting of the share price;

c. whether defendants failed to properly implement Putnam International Equity Fund's portfolio valuation and share pricing policies and procedures making daily adjustments to stale closing prices of the underlying portfolio securities before the fund's NAV calculation and share price setting;

d. whether defendants failed to properly implement Putnam International Equity Fund's portfolio valuation and share pricing policies so as to require the use of fair value pricing on a daily basis to value portfolio securities and fund NAV and share prices when closing prices of portfolio securities did not reflect their market values;

e. whether defendants failed to protect Putnam International Equity Fund's long term shareholders from market timing traders using fund shares as a trading vehicle to earn profits at the expense of long term shareholders because of the failure of defendants to make daily adjustments, based upon known United States market results and recognized positive correlations between upward move-

ments in United States and foreign markets, prior to the daily calculation of the fund NAV and the setting of share prices as well as their use of stale prices in the valuation of the fund's portfolio securities prior to the daily calculation of the fund NAV and the setting of share prices;

f. whether defendants breached the duties they owed to plaintiffs and the class;

g. whether plaintiffs and the class have been damaged and, if so,

h. the extent of such damages.

41. The prosecution of separate actions by individual members of the Class would create a risk of:

a. inconsistent or varying adjudications with respect to individual members of the class; and

b. adjudication with respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

42. The class action method is appropriate for the fair and efficient prosecution of this action.

43. Individual litigation of all claims, which might be brought by all class members, would produce a multiplicity of cases so that the judicial system would be congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising from the conduct of the defendants.

COUNT I

Plaintiffs, Steve and Beth Dudley, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for Count I of their Com-

plaint against Defendants Putnam International Fund and Putnam Fund Manager, state as follows:

44. Plaintiffs repeat and incorporate by reference paragraphs 1 through 43 as if fully set forth herein.

45. Defendant Putnam International Fund operates Putnam International Equity Fund as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

46. Defendant Putnam Fund Manager serves as the investment manager for Putnam International Equity Fund. Defendant Putnam Fund Manager provides, among other things, portfolio management services and selects the securities for Putnam International Equity Fund to buy, hold or sell. Putnam International Equity Fund pays Defendant Putnam Fund Manager set fees based on the percentage of assets under management for managing Putnam International Equity Fund's assets. Defendant Putnam Fund Manager's compensation and management of the Putnam International Equity Fund are required to be reviewed and approved by Defendant Putnam International Funds' board of trustees.

47. At all times relevant hereto, Plaintiffs Steve and Beth Dudley have owned shares in Putnam International Equity Fund.

48. At all times relevant herein, Defendants had a duty when valuing the fund's securities and determining daily NAV to utilize accurate current market values for such securities in order to avoid dilution in the value of long term shareholders' holdings.

49. Defendants breached their duties of due care owed to Plaintiffs Steve and Beth Dudley and similarly situated

shareholders of the Putnam International Equity Fund by, inter alia:

a. failing to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International Equity Fund's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

b. failing to implement Putnam International Equity Fund's portfolio valuation and share pricing policies and procedures; and

c. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Putnam International Equity Fund's shares at the expense of long term shareholders.

50. As a direct and proximate result of the Defendants' breach of their duties, Plaintiffs Steve and Beth Dudley and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Putnam International Equity Fund and Putnam Investment Management, LLC, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Putnam International Equity Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, and attor-

neys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

COUNT II

Plaintiffs, Steve and Beth Dudley, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for Count II of their Complaint against Defendants Putnam International Fund and Putnam Fund Manager, state as follows:

51. Plaintiffs repeat and incorporate by reference paragraphs 1 through 48 as if fully set forth herein.

52. On or about January 1, 1965, applicable published regulations expressly recognized that changes in trading prices of securities in the Putnam International Equity Fund might occur daily after the closing of the New York Stock Exchange.

53. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities held by the Putnam International Equity Fund and used by Defendants to calculate NAV for said Fund did not represent current market value because, inter alia, those prices did not reflect changes in the fund's securities which occurred after the exchange on which those foreign securities trade closed and before defendants calculated NAV and share price.

54. With utter indifference and conscious disregard for Plaintiffs Steve and Beth Dudley's investment and the investments of similarly situated fund shareholders, Defendants willfully and wantonly breached their duties to Plaintiffs Steve and Beth Dudley and similarly situated shareholders by, inter alia:

a. failing to know and implement applicable rules and regulations concerning the calculation of NAV;

b. failing to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International Equity Fund's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

c. failing to implement Putnam International Equity Fund's portfolio valuation and share pricing policies and procedures; and

d. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Putnam International Equity Fund's shares at the expense of long term shareholders.

55. As a direct and proximate result of the Defendants' breach of their duties, Plaintiffs Steve and Beth Dudley and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Putnam International Fund and Putnam Investment Management, LLC, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Putnam International Equity Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing

the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

[attorney name and address blocks omitted]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Cause No. 03-L-1540

STEVE AND BETH DUDLEY,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,
Plaintiffs,

v.

PUTNAM INVESTMENT FUNDS AND
PUTNAM INVESTMENT MANAGEMENT, LLC,
Defendants.

[Filed Nov. 10, 2003]

COMPLAINT

Plaintiffs, Steve and Beth Dudley, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for their complaint against Defendants Putnam Investment Funds and Putnam Investment Management, LLC, state as follows:

1. Plaintiffs, Steve and Beth Dudley, are residents of East Alton, Madison County, Illinois.

2. Defendant, Putnam Investment Funds ("Putnam Funds"), is a Massachusetts business trust with its principal place of business in Boston, Massachusetts. Putnam Funds is the registrant of the Putnam International New Opportunities Fund ("Putnam International New Opportunities Fund"). Defendant Putnam Funds does business in the state of Illinois and is registered as a mutual fund in the State of Illinois. Defendant, Putnam Funds, has consented to the jurisdiction of Illinois courts. Defendant Putnam Funds at all times relevant herein has promoted,

marketed, and sold shares to the investing public nationwide including the state of Illinois. Defendant Putnam Funds maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant Putnam Funds has significant contacts with Madison County and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

3. Defendant, Putnam Investment Management, LLC ("Putnam Fund Manager") is a Delaware Limited Liability Company with its principal place of business in Boston, Massachusetts. The day-to-day tasks associated with running the business of Putnam International New Opportunities Fund, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and custodianship of funds are contracted out since it has no significant number of internal employees. Defendant Putnam Fund Manager has been contracted to serve as the investment manager for the Putnam International New Opportunities Fund. As the investment manager for Putnam International New Opportunities Fund, Defendant Putnam Fund Manager selects the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant Putnam Fund Manager has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of Putnam International New Opportunities Fund business and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant Putnam Fund Manager utilizes an interactive web site to communicate with fund shareholders, including those in Madison County, Illinois regarding the performance of the Fund and the investments it manages.

4. At all times relevant herein, Plaintiffs, Steve and Beth Dudley, have owned and held shares in the Putnam International New Opportunities Fund for the purpose of long term investing in international securities.

5. This Court has jurisdiction over the subject matter and the parties pursuant to 735 ILCS 5/2-209.

6. Venue is proper in this Court pursuant to 735 ILCS 5/2-101.

7. The foreign securities purchased by Defendants' fund for its portfolio are principally traded in securities markets outside of the United States.

8. Open end mutual funds such as Defendants' fund have been tremendously successful in convincing investors such as Plaintiffs to hold their fund shares by urging investors to invest for the long term and by effectively marketing the various advantages of long term ownership of funds over direct investment including professional management, diversification, and liquidity.

9. Shares of open end mutual funds are sold to investors such as Plaintiffs at a price based upon the net asset value ("NAV") per share plus applicable sales charges. Investors in shares may redeem their shares at the NAV of the shares less any redemption charges.

10. The share prices (NAV) of Defendants' mutual funds are set by deducting the fund liabilities from the total assets of the portfolio and then dividing by the number of outstanding shares.

11. Because the sales and redemption prices are based upon NAV, which in turn depends upon the fluctuating value of the fund's underlying portfolio of securities, Defendants recalculate the fund net asset value every business day. Defendants set the fund share price (NAV) once every business day at the close of trading on the New York Stock Exchange at 4:00 p.m. Eastern Time. The NAV of the shares is reported by Defendants to the National Association of Securities Dealers (NASD) for public distribution.

12. In valuing the fund's underlying assets for purposes of setting the NAV, Defendants use the last trade price in the home market of each of the securities in its portfolio. A significant portion of the securities in the De-

fendants' fund's portfolio are foreign securities. The home markets for such foreign securities include London, Paris, Frankfurt, Moscow, Singapore, Kuala Lumpur, Hong Kong, Taipei, Tokyo and Sydney. These markets are located in time zones that are five hours to fifteen hours ahead of Eastern Standard Time.

13. Studies of world financial markets have established associations between the value changes among various markets. There is a positive correlation between value movements in the United States market and value movements in foreign markets. If the United States market experiences an upward movement in values, it can be predicted that Asian markets will move upward once trading begins their next day. The same upward movement can be predicted for European markets once trading begins their next day. Similarly, if the United States market experiences a downward movement in values, it can be predicted that Asian and European markets will move downward once trading begins their next day. Because of these positive correlations, the closing prices of the foreign securities in the underlying portfolio may not reflect current market values at the time Defendants set their fund NAV. Appropriate adjustments need to be made to the closing prices of the foreign securities in order to reflect current market values. Despite knowledge of the United States market result, continuous trading of the world equity indexes, ADRs, and foreign currency futures markets and the correlations between the value of the fund's securities and these benchmarks, Defendants do not make any value adjustment to the portfolio's foreign securities prior to calculating fund NAV and setting share price every business day.

14. The positive correlation between the upward or downward movement of value in the United States market and subsequent movements in foreign markets around the world is between 0.7 and 0.8. A value of 0.0 equates to absolutely no correlation between value movements in United States markets and subsequent movements in foreign markets. A value of 1.0 equates to an absolute corre-

lation between value movements in United States markets and subsequent value movements in foreign markets.

15. Studies of world financial markets demonstrate that the greater the percentage increase or decrease in the value of United States markets, the more likely foreign markets will post corresponding value movements on subsequent days. The probability that the value movements of foreign markets will follow the previous day's value movements in United States markets is directly correlated with the degree or extent of the value movement of United States markets.

16. Because many of the home markets for the foreign securities in the Defendants' asset portfolio last traded hours before the setting at 4:00 p.m. Eastern of the fund NAV, the closing prices used to calculate the NAV of Defendants' funds are stale and do not reflect price relevant information available subsequent to the foreign securities' last trade that will affect the value of such security.

17. During the interval that elapses between the time that Defendants set their share NAV (and release it to the NASD for communication to the public) on consecutive days, the securities markets in Australia, Japan, Taiwan, Hong Kong, Malaysia, Singapore, Russia, Germany, France and the United Kingdom have traded for an entire session from open to close.

18. The exchange located in Sydney, Australia observes normal market trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

19. The exchange located in Tokyo, Japan observes normal trading hours of 9:00 a.m. to 3:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 3:00

p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

20. The exchange located in Taipei, Taiwan observes normal trading hours of 9:00 a.m. to 1:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 1:30 p.m. local time (1:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14.5 hours.

21. The exchange located in Hong Kong observes normal trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (4:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 12 hours.

22. The exchange located in Kuala Lumpur, Malaysia observes normal trading hours of 9:30 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

23. The exchange located in Singapore observes normal trading hours of 9:00 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this ex-

change, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

24. The exchange located in Moscow, Russia observes normal trading hours of 12:00 p.m. to 7:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 7:00 p.m. local time (11:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 5 hours.

25. The exchange located in Frankfurt, Germany observes normal trading hours of 9:00 a.m. to 8:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 8:00 p.m. local time (2:00 p.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 2 hours.

26. The exchange located in Paris, France observes normal trading hours of 9:00 a.m. to 5:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at, 5:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV, using closing prices from this exchange Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

27. The exchange located in London, England observes normal market hours of 8:00 a.m. to 4:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at 4:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

28. A significant portion of the underlying foreign securities in the Defendants' fund portfolio are listed on foreign exchanges and trade during each market's respective session. The NAVs set by Defendants do not take into account on a daily basis any price relevant information that has become available in this two to fourteen and one/half hour interval, after the final prices for the underlying foreign securities have been posted but, prior to the setting of the NAVs. Price relevant information, such as the continuous trading of world equity market indexes, ADRs, and foreign currency futures impacts the valuation of these underlying foreign securities and is significant for valuation because the final market prices have become stale and do not reflect the current market value of the securities.

29. By failing to make daily adjustments based upon positive correlations between upward or downward movements in United States and foreign markets and by choosing to use stale prices in valuing their fund shares and setting their daily NAVs, Defendants have exposed long term shareholders to market timing traders who regularly purchase and redeem Defendants' shares as part of a profitable trading strategy. The market timing trading strategy stems from the ability of market timing traders to predict changes in the NAV. Market timing traders are able to predict changes in the NAV because of the positive correlations between value movements in United States markets and foreign markets. The stale price strategy of market timers who trade Defendants' shares is to buy shares on days when the United States market moves up and to sell (redeem) shares when the United States market moves down. In order to derive maximum benefit from price relevant information developed subsequent to the now stale closing prices of the portfolio securities, market timers wait until the fund deadline for buying or selling (redeeming) shares in Defendants' funds on any particular business day. Because Defendants cannot buy or sell the foreign securities in the fund's underlying portfolio (due to the time difference between New York and the home mar-

kets of the foreign securities) at the time it sets the daily NAV that values the shares it issues and redeems, the shares that Defendants issue to and redeem from market timers do not reflect current market prices of the foreign securities held by the fund.

30. Due to the use of stale prices by Defendants in valuing the fund shares, market timers who buy Defendants' fund shares on days when the United States market moves up are buying discounted shares at the expense of other fund shareholders because the funds underlying foreign securities assets are undervalued as of the time of the share purchase.

31. Due to the use of stale prices by Defendants in valuing their fund shares, market timers who sell (redeem) Defendants' fund shares on days when the United States market moves down are selling (redeeming) shares at a premium at the expense of other fund shareholders because the underlying foreign securities assets are overvalued as of the time of the share sale (redemption).

32. Shares in Defendants' fund can be traded, either by purchase or redemption, only once a day at 4:00 p.m. Eastern Time.

33. The excess profits that are obtained by market timing traders' taking advantage of the stale pricing of Defendants' fund shares come at the expense of fellow shareholders who are non-trading long term buy and hold investors. The transfer of wealth from the non-trading long term buy and hold shareholders to the market timers trading Defendants' fund shares occurs through dilution.

34. Market timing traders pay cash to Defendants' fund when they purchase discounted shares. Market timing traders receive cash from Defendants' fund when they sell (redeem) their shares at a premium. Defendants' fund NAV is diluted in both instances. When market timing traders are able to buy shares at a discount, Defendants' fund assets suffer dilution because the cash received by the fund for each of the shares purchased is less than the

per share value of the underlying foreign securities because of the stale pricing method utilized by Defendants. Likewise, when market timing traders are able to sell (redeem) shares at a premium, Defendants' fund assets suffer dilution because the cash paid out by the fund for the shares redeemed is more than the per share value of the underlying securities, again due to the stale pricing utilized by Defendants. In both instances, when Defendants receive less cash when issuing and pay out more cash when redeeming market timing trader shares than supported by the value of their underlying foreign securities, the result is a dilution of Defendants' cash. Since the cash held by the fund is one of the assets that is valued in setting the Defendants' daily fund NAV, it follows that the diluted fund cash position causes the fund NAV to be diluted as well. Due to the stale pricing utilized by Defendants, long term buy and hold shareholders have incurred a dilution in the NAV of their shares and the wealth represented by that diluted amount has been transferred to market timing traders.

35. By failing to make daily adjustments based upon positive correlations between upward movements in United States and foreign markets, world equity index market trading, ADRs, and foreign currency futures and by choosing to use stale prices in valuing the underlying foreign securities that are used setting their daily NAV, Defendants give market timing traders the opportunity to earn vastly higher returns at no additional risk. Unlike other market timing based trading, market timers who trade Defendants' shares do not have to look into the future to time their purchases and redemptions of shares, rather, they have the luxury of being able to look backwards because Defendants' fund share pricing fails to adjust for recognized positive correlations and uses stale prices in valuing its underlying portfolio securities.

36. Since it is such an attractive low risk trading vehicle to market timers, Defendants' funds experience increased trading and transaction costs, disruption of

planned investment strategies, forced and unplanned portfolio turnover including the liquidation of investments to meet market timer redemption requests, lost opportunity costs and asset swings that negatively impact fund operations, performance and the ability of the fund to provide a maximized return to long term shareholders.

37. Plaintiffs bring this complaint as a class action against Defendants Putnam Funds and Putnam Fund Manager, and pursuant to § 5/2-801 et seq., of the Illinois Code of Civil Procedure individually and on behalf of a class of all persons in the United States who have held shares of Putnam International New Opportunities Fund for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ("long term shareholders"). The class period commences five years prior to the filing of this complaint through the date of filing. Excluded from the class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family members of any such person. Also excluded is any judge who may preside over this case.

38. Plaintiffs are members of the class and will fairly and adequately assert and protect the interests of the class. The interests of the Plaintiffs are coincident with, and not antagonistic to, those of other members of the class. Plaintiffs have retained attorneys who are experienced in class action litigation.

39. Members of the class are so numerous that joinder of all members is impracticable.

40. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a. whether defendants failed to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International New Opportunities

Fund's portfolio of securities had occurred after the foreign home markets for such securities had closed but before the fund's NAV calculation and share price setting;

b. whether defendants failed to properly implement Putnam International New Opportunities Fund's portfolio valuation and share pricing policies and procedures making daily adjustments based upon United States market results and recognized positive correlations between upward movements in United States and foreign markets in the valuation of the fund's portfolio securities prior to the calculation of the fund NAV and setting of the share price;

c. whether defendants failed to properly implement Putnam International New Opportunities Fund's portfolio valuation and share pricing policies and procedures making daily adjustments to stale closing prices of the underlying portfolio securities before the fund's NAV calculation and share price setting;

d. whether defendants failed to properly implement Putnam International New Opportunities Fund's portfolio valuation and share pricing policies so as to require the use of fair value pricing on a daily basis to value portfolio securities and fund NAV and share prices when closing prices of portfolio securities did not reflect their market values;

e. whether defendants failed to protect Putnam International New Opportunities Fund's long term shareholders from market timing traders using fund shares as a trading vehicle to earn profits at the expense of long term shareholders because of defendants' failure to make daily adjustments, based upon known United States market results and recognized positive correlations between upward movements in United States and foreign markets, prior to the daily calculation of the fund

NAV and the setting of share prices as well as their use of stale prices in the valuation of the fund's portfolio securities prior to the daily calculation of the fund NAV and the setting of share prices;

f. whether defendants breached the duties they owed to plaintiffs and the class;

g. whether plaintiffs and the class have been damaged and, if so,

h. the extent of such damages.

41. The prosecution of separate actions by individual members of the Class would create a risk of:

a. inconsistent or varying adjudications with respect to individual members of the class; and

b. adjudication with respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

42. The class action method is appropriate for the fair and efficient prosecution of this action.

43. Individual litigation of all claims, which might be brought by all class members, would produce a multiplicity of cases so that the judicial system would be congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising from the conduct of the defendants.

COUNT I

Plaintiffs, Steve and Beth Dudley, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for Count I of their Complaint against Defendants Putnam Funds and Putnam Fund Manager, state as follows:

44. Plaintiffs repeat and incorporate by reference paragraphs 1 through 43 as if fully set forth herein.

45. Defendant Putnam Funds operates Putnam International New Opportunities Fund as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

46. Defendant Putnam Fund Manager serves as the investment manager for Putnam International New Opportunities Fund. Defendant Putnam Fund Manager provides, among other things, portfolio management services and selects the securities for Putnam International New Opportunities Fund to buy, hold or sell. Putnam International New Opportunities Fund pays Defendant Putnam Fund Manager set fees based on the percentage of assets under management for managing Putnam International New Opportunities Fund's assets. Defendant Putnam Fund Manager's compensation and management of the Putnam International New Opportunities Fund are required to be reviewed and approved by Defendant Putnam Funds' board of trustees.

47. At all times relevant hereto, Plaintiffs Steve and Beth Dudley have owned shares in Putnam International New Opportunities Fund.

48. At all times relevant herein, Defendants had a duty when valuing the fund's securities and determining daily NAV to utilize accurate current market values for such securities in order to avoid dilution in the value of long term shareholders' holdings.

49. Defendants breached their duties of due care owed to Plaintiffs Steve and Beth Dudley, and similarly situated owners of the Putnam International New Opportunities Fund by, inter alia:

a. failing to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International New Opportunities Fund's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices;

b. failing to implement Putnam International New Opportunities Fund's portfolio valuation and share pricing policies and procedures; and

c. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Putnam International New Opportunities Fund's shares at the expense of long term shareholders.

50. As a direct and proximate result of the Defendants' breach of their duties, Plaintiffs and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Putnam Funds and Putnam Fund Manager, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Putnam International New Opportunities Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

COUNT II

Plaintiffs, Steve and Beth Dudley, individually and on behalf of all others similarly situated, by and through their undersigned counsel, and for Count II of their Complaint against Defendants Putnam Funds and Putnam Fund Manager, state as follows:

51. Plaintiffs repeat and incorporate by reference paragraphs 1 through 48 as if fully set forth herein.

52. On or about January 1, 1965, applicable published regulations expressly recognized that changes in trading prices of securities in the Putnam International New Opportunities Fund might occur daily after the closing of the New York Stock Exchange.

53. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities held by the Putnam International New Opportunities Fund and used by Defendants to calculate NAV for said Fund did not represent current market value because, inter alia, those prices did not reflect changes in the fund's securities which occurred after the exchange on which those foreign securities trade closed and before Defendants calculated NAV and share prices.

54. With utter indifference and conscious disregard for Plaintiffs' investment and the investments of similarly situated fund shareholders, Defendants willfully and wantonly breached their duties to Plaintiffs and similarly situated shareholders by, inter alia:

a. failing to know and implement applicable rules and regulations concerning the calculation of NAV;

b. failing to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International New Opportunities Fund's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share price;

c. failing to implement Putnam International New Opportunities Fund's portfolio valuation and share pricing policies and procedures; and

d. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Putnam International New Opportunities Fund's shares at the expense of long term shareholders.

55. As a direct and proximate result of the Defendants' breach of their duties, Plaintiffs Steve and Beth Dudley and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Putnam Funds and Putnam Fund Manager, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following class be certified:

> All persons in the United States who held shares in the Putnam International New Opportunities Fund for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiffs and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFFS DEMAND TRIAL BY JURY

[attorney name and address blocks omitted]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Cause No. 03-L-1550

GARY VOGELER, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiff,

v.

COLUMBIA ACORN TRUST AND
COLUMBIA WANGER ASSET MANAGEMENT, LP,
Defendants.

[Filed Nov. 13, 2003]

COMPLAINT

Plaintiff, Gary Vogeler, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for his complaint against Defendants, Columbia Acorn Trust and Columbia Wanger Asset Management, LP, states as follows:

1. Plaintiff, Gary Vogeler, is a resident of Godfrey, Madison County, Illinois.

2. Defendant, Columbia Acorn Trust ("Columbia Trust"), is a Massachusetts business trust with its principal place of business in Chicago, Illinois.[1] Columbia Trust is the registrant of the Columbia Acorn International Fund ("Columbia Acorn").[2] Defendant Columbia Trust does business in the state of Illinois and is registered as a mutual fund in the State of Illinois. Defendant Columbia

[1] Formerly known as "Liberty Acorn Trust."

[2] Formerly known as "Liberty Acorn International Fund."

Trust has consented to the jurisdiction of Illinois courts. Defendant Columbia Trust at all times relevant herein has promoted, marketed, and sold shares to the investing public nationwide including the state of Illinois. Defendant Columbia Trust maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant Columbia Trust has significant contacts with Madison County and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

3. Defendant, Columbia Wanger Asset Management, LP ("Columbia Fund Manager"), is a Delaware partnership with its principal place of business in Chicago, Illinois.[3] The day-to-day tasks associated with running the business of Columbia Acorn, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and custodianship of funds are contracted out since it has no significant number of internal employees. Defendant Columbia Fund Manager has been contracted to serve as the investment manager for the Columbia Acorn. As the investment manager for Columbia Acorn, Defendant Columbia Fund Manager selects the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant Columbia Fund Manager has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of Columbia Acorn business and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant Columbia Fund Manager utilizes an interactive web site to communicate with fund shareholders, including those in Madison County, Illinois regarding the performance of the Fund and the investments it manages.

4. At all times relevant herein, Plaintiff Gary Vogeler has owned and held shares in the Columbia Acorn for the purpose of long term investing in international securities.

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[3] Formerly known as "Liberty Wanger Asset Management, LP."

5. This Court has jurisdiction over the subject matter and the parties pursuant to 735 ILCS 5/2-209.

6. Venue is proper in this Court pursuant to 735 ILCS 5/2-101.

7. The foreign securities purchased by Defendants' fund for its portfolios are principally traded in securities markets outside of the United States.

8. Open end mutual funds such as Defendants' fund have been tremendously successful in convincing investors such as Plaintiff to hold their fund shares by urging investors to invest for the long term and by effectively marketing the various advantages of long term ownership of funds over direct investment including professional management, diversification, and liquidity.

9. Shares of open end mutual funds are sold to investors such as Plaintiff at a price based upon the net asset value ("NAV") per share plus applicable sales charges. Investors in shares may redeem their shares at the NAV of the shares less any redemption charges.

10. The share prices (NAV) of Defendants' mutual fund are set by deducting the fund liabilities from the total assets of the portfolio and then dividing by the number of outstanding shares.

11. Because the sales and redemption prices are based upon NAV, which in turn depends upon the fluctuating value of the fund's underlying portfolio of securities, Defendants recalculate the fund net asset value every business day. Defendants set the fund share price (NAV) once every business day at the close of trading on the New York Stock Exchange at 4:00 p.m. Eastern Time. The NAV of the shares is reported by Defendants to the National Association of Securities Dealers (NASD) for public distribution.

12. In valuing its underlying assets for purposes of setting the NAV, Defendants use the last trade price in the home market of each of the securities in its portfolio. A significant portion of the securities in the Defendants' fund

portfolio are foreign securities. The home markets for such foreign securities include London, Paris, Frankfurt, Moscow, Singapore, Kuala Lumpur, Hong Kong, Taipei, Tokyo and Sydney. These markets are located in time zones that are five hours to fifteen hours ahead of Eastern Standard Time.

13. Studies of world financial markets have established associations between the value changes among various markets. There is a positive correlation between value movements in the United States market and value movements in foreign markets. If the United States market experiences an upward movement in values, it can be predicted that Asian markets will move upward once trading begins their next day. The same upward movement can be predicted for European markets once trading begins their next day. Similarly, if the United States market experiences a downward movement in values, it can be predicted that Asian and European markets will move downward once trading begins their next day. Because of these positive correlations, the closing prices of the foreign securities in the underlying portfolio may not reflect current market values at the time Defendants set their fund NAV. Appropriate adjustments need to be made to the closing prices of the foreign securities in order to reflect current market values. Despite knowledge of the United States market result, continuous trading of the world equity indexes, ADRs, foreign currency futures markets, and the correlations between the value of the fund's securities and these benchmarks, Defendants do not make any value adjustment to the portfolio's foreign securities prior to calculating fund NAV and setting share price every business day.

14. The positive correlation between the upward or downward movement of value in the United States market and subsequent movements in foreign markets around the world is between 0.7 and 0.8. A value of 0.0 equates to absolutely no correlation between value movements in United States markets and subsequent movements in foreign markets. A value of 1.0 equates to an absolute corre-

lation between value movements in United States markets and subsequent value movements in foreign markets.

15. Studies of world financial markets demonstrate that the greater the percentage increase or decrease in the value of United States markets, the more likely foreign markets will post corresponding value movements on subsequent days. The probability that the value movements of foreign markets will follow the previous day's value movements in United States markets is directly correlated with the degree or extent of the value movement of United States markets.

16. Because many of the home markets for the foreign securities in the Defendants' asset portfolio last traded hours before the setting at 4:00 p.m. Eastern of the fund NAV, the closing prices used to calculate the NAV of Defendants' fund are stale and do not reflect price relevant information available subsequent to the foreign security's last trade that will affect the value of such security.

17. During the interval that elapses between the time that Defendants set the fund share NAV (and release it to the NASD for communication to the public) on consecutive days, the securities markets in Australia, Japan, Taiwan, Hong Kong, Malaysia, Singapore, Russia, Germany, France and the United Kingdom have traded for an entire session from open to close.

18. The exchange located in Sydney, Australia, observes normal market trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

19. The exchange located in Tokyo, Japan, observes normal trading hours of 9:00 a.m. to 3:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 3:00

p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

20. The exchange located in Taipei, Taiwan, observes normal trading hours of 9:00 a.m. to 1:30 p.m. local time. Active trading of securities traded on this exchange ends. and closing prices for those securities are posted, at 1:30 p.m. local time (1:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14.5 hours.

21. The exchange located in Hong Kong observes normal trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (4:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 12 hours.

22. The exchange located in Kuala Lumpur, Malaysia, observes normal trading hours of 9:30 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

23. The exchange located in Singapore observes normal trading hours of 9:00 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this ex-

change, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

24. The exchange located in Moscow, Russia, observes normal trading hours of 12:00 p.m. to 7:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 7:00 p.m. local time (11:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 5 hours.

25. The exchange located in Frankfurt, Germany, observes normal trading hours of 9:00 a.m. to 8:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 8:00 p.m. local time (2:00 p.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 2 hours.

26. The exchange located in Paris, France, observes normal trading hours of 9:00 a.m. to 5:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at, 5:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV, using closing prices from this exchange Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

27. The exchange located in London, England, observes normal market hours of 8:00 a.m. to 4:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at 4:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

28. A significant portion of the underlying foreign securities in the Defendants' fund portfolio are listed on foreign exchanges and trade during each market's respective session. The NAVs set by Defendants do not take into account on a daily basis any price relevant information that has become available in this two to fourteen and one/half hour interval, after the final prices for the underlying foreign securities have been posted but, prior to the setting of the NAVs. Price relevant information, such as the continuous trading of world equity market indexes, ADRs, and foreign currency futures impacts the valuation of these underlying foreign securities and is significant for valuation because the final market prices have become stale and do not reflect the current market value of the securities.

29. By failing to make daily adjustments based upon positive correlations between upward or downward movements in United States and foreign markets and by choosing to use stale prices in valuing their fund shares and setting their daily NAVs, Defendants have exposed long term shareholders to market timing traders who regularly purchase and redeem Defendants' fund shares as part of a profitable trading strategy. The market timing trading strategy stems from the ability of market timing traders to predict changes in the NAV. Market timing traders are able to predict changes in the NAV because of the positive correlations between value movements in United States markets and foreign markets. The stale price strategy of market timers who trade Defendants' shares is to buy shares on days when the United States market moves up and to sell (redeem) shares when the United States market moves down. In order to derive maximum benefit from price relevant information developed subsequent to the now stale closing prices of the portfolio securities, market timers wait until the fund deadline for buying or selling (redeeming) shares in Defendants' funds on any particular business day. Because Defendants cannot buy or sell the foreign securities in the funds' underlying portfolio (due to the time difference between New York and the home mar-

kets of the foreign securities) at the time it sets the daily NAV that values the shares it issues and redeems, the shares that Defendants issue to and redeem from market timers do not reflect current market prices of the foreign securities held by the fund.

30. Due to the use of stale prices by Defendants in valuing the fund shares, market timers who buy Defendants' fund shares on days when the United States market moves up are buying discounted shares at the expense of other fund shareholders because the fund's underlying foreign securities assets are undervalued as of the time of the share purchase.

31. Due to the use of stale prices by Defendants in valuing their fund shares, market timers who sell (redeem) Defendants' fund shares on days when the United States market moves down are selling (redeeming) shares at a premium at the expense of other fund shareholders because the underlying foreign securities assets are overvalued as of the time of the share sale (redemption).

32. Shares in Defendants' funds can be traded, either by purchase or redemption, only once a day at 4:00 p.m. Eastern Time.

33. The excess profits that are obtained by market timing traders' taking advantage of the stale pricing of Defendants' fund shares come at the expense of fellow shareholders who are non-trading long term buy and hold investors. The transfer of wealth from the non-trading long term buy and hold shareholders to the market timers trading Defendants' fund shares occurs through dilution.

34. Market timing traders pay cash to Defendants' funds when they purchase discounted shares. Market timing traders receive cash from Defendants' funds when they sell (redeem) their shares at a premium. Defendants' fund NAV is diluted in both instances. When market timing traders are able to buy shares at a discount, Defendants' fund assets suffer dilution because the cash received by the fund for each of the shares purchased is less than the

per share value of the underlying foreign securities because of the stale pricing utilized by Defendants. Likewise, when market timing traders are able to sell (redeem) shares at a premium, Defendants' fund assets suffer dilution because the cash paid out by the fund for each of the shares redeemed is more than the per share value of the underlying securities, again due to the stale pricing utilized by Defendants. In both instances, when Defendants receive less cash when issuing and pay out more cash when redeeming market timing trader shares than supported by the value of their underlying foreign securities, the result is a dilution of Defendants' cash. Since the cash held by the fund is one of the assets that is valued in setting the Defendants' daily fund NAV, it follows that the diluted fund cash position causes the fund NAV to be diluted as well. Due to the stale pricing utilized by Defendants, long term buy and hold shareholders have incurred a dilution in the NAV of their shares and the wealth represented by that diluted amount has been transferred to market timing traders.

35. By failing to make daily adjustments based upon positive correlations between upward movements in United States and foreign markets, world equity index market trading, ADRs, foreign currency futures and by choosing to use stale prices in valuing the underlying foreign securities that are used setting their daily NAV, Defendants give market timing traders the opportunity to earn vastly higher returns at no additional risk. Unlike other market timing based trading, market timers who trade Defendants' shares do not have to look into the future to time their purchases and redemptions of shares, rather, they have the luxury of being able to look backwards because Defendants' share pricing fails to adjust for recognized positive correlations and uses stale prices in valuing its underlying portfolio securities.

36. Since it is such an attractive low risk trading vehicle to market timers, Defendants' funds experience increased trading and transaction costs, disruption of

planned investment strategies, forced and unplanned portfolio turnover including the liquidation of investments to meet market timer redemption requests, lost opportunity costs and asset swings that negatively impact fund operations, performance and the ability of the fund to provide a maximized return to long term shareholders.

37. Plaintiff brings this complaint as a class action against Defendants Columbia Trust and Columbia Fund Manager, and pursuant to § 5/2-801 et seq., of the Illinois Code of Civil Procedure individually and on behalf of a class of all persons in the United States who have held shares of Columbia Acorn for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ("long term shareholders"). The class period commences five years prior to the fling of this complaint through the date of filing. Excluded from the class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family members of any such person. Also excluded is any judge who may preside over this case.

38. Plaintiff is a member of the class and will fairly and adequately assert and protect the interests of the class. The interest of the Plaintiff is coincident with, and not antagonistic to, those of other members of the class. Plaintiff has retained attorneys who are experienced in class action litigation.

39. Members of the class are so numerous that joinder of all members is impracticable.

40. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a. whether defendants failed to properly evaluate on a daily basis whether a significant event affecting the value of Columbia Acorn's portfolio of securities had occurred after the foreign home markets for

such securities had closed but before the fund's NAV calculation and share price setting;

b. whether defendants failed to properly implement Columbia Acorn's portfolio valuation and share pricing policies and procedures making daily adjustments based upon United States market results and recognized positive correlations between upward movements in United States and foreign markets in the valuation of the fund's portfolio securities prior to the calculation of the fund NAV and setting of the share price;

c. whether defendants failed to properly implement Columbia Acorn's portfolio valuation and share pricing policies and procedures making daily adjustments to stale closing prices of the underlying portfolio securities before the fund's NAV calculation and share price setting;

d. whether defendants failed to properly implement Columbia Acorn's portfolio valuation and share pricing policies so as to require the use of fair value pricing on a daily basis to value portfolio securities and fund NAV and share prices when closing prices of portfolio securities did not reflect their market values;

e. whether defendants failed to protect Columbia Acorn's long term shareholders from market timing traders using fund shares as a trading vehicle to earn profits at the expense of long term shareholders because of the failure of defendants to make daily adjustments, based upon known United States market results and recognized positive correlations between upward movements in United States and foreign markets, prior to the daily calculation of the fund NAV and the setting of share prices as well as their use of stale prices in the valuation of the fund's portfolio securities prior to

the daily calculation of the fund NAV and the setting of share price;

f. whether defendants breached the duties they owed to plaintiff and the class;

g. whether plaintiff and the class have been damaged and, if so,

h. the extent of such damages.

41. The prosecution of separate actions by individual members of the Class would create a risk of:

a. inconsistent or varying adjudications with respect to individual members of the class; and

b. adjudication with respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

42. The class action method is appropriate for the fair and efficient prosecution of this action.

43. Individual litigation of all claims, which might be brought by all class members would produce a multiplicity of cases so that the judicial system would be congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising from the conduct of the defendants.

COUNT I

Plaintiff, Gary Vogeler, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for Count I of his Complaint against Defendants Columbia Trust and Columbia Fund Manager, states as follows:

44. Plaintiff repeats and incorporates by reference paragraphs 1 through 43 as if fully set forth herein.

45. Defendant Columbia Trust operates Columbia Acorn as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

46. Defendant Columbia Fund Manager serves as the investment manager for Columbia Acorn. Defendant Columbia Fund Manager provides, among other things, portfolio management services and selects the securities for Columbia Acorn to buy, hold or sell. Columbia Acorn pays Defendant Columbia Fund Manager set fees based on the percentage of assets under management for managing Columbia Acorn's assets. Defendant Columbia Fund Manager's compensation and management of the Columbia Acorn are required to be reviewed and approved by Defendant Columbia Trust's board of trustees.

47. At all times relevant hereto, Plaintiff Gary Vogeler has held shares in Columbia Acorn.

48. At all times relevant herein, Defendants had a duty when valuing the fund's securities and determining daily NAV to utilize accurate current market values for such securities in order to avoid dilution in the value of long term shareholders' holdings.

49. Defendants breached their duties of due care owed to Plaintiff Gary Vogeler and similarly situated shareholders of the Columbia Acorn by, inter alia:

a. failing to properly evaluate on a daily basis whether a significant event affecting the value of Columbia Acorn's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share price;

b. failing to implement Columbia Acorn's portfolio valuation and share pricing policies and procedures; and

c. allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Columbia Acorn's shares at the expense of long term shareholders.

50. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against Columbia Trust and Columbia Fund Manager, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Columbia Acorn for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiff and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFF DEMANDS TRIAL BY JURY

COUNT II

Plaintiff Gary Vogeler, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for Count II of his Complaint against Defen-

dants Columbia Trust and Columbia Fund Manager, states as follows:

51. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 as if fully set forth herein.

52. On or about January 1, 1965, applicable published regulations expressly recognized that changes in trading prices of securities in the Columbia Acorn might occur daily after the closing of the New York Stock Exchange.

53. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities held by the Columbia Acorn and used by Defendants to calculate NAV for said Fund did not represent current market value because, inter alia, those prices did not reflect changes in the fund's securities which occurred after the exchange on which those foreign securities trade closed and before the daily calculation of the fund NAV and the setting of share price.

54. With utter indifference and conscious disregard for Plaintiff's investment and the investments of similarly situated fund shareholders, Defendants willfully and wantonly breached their duties to Plaintiff and similarly situated shareholders by, inter alia:

a. failing to know and implement applicable rules and regulations concerning the calculation of NAV;

b. failing to properly evaluate on a daily basis whether a significant event affecting the value of Columbia Acorn's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share price;

c. failing to implement Columbia Acorn's portfolio valuation and share pricing policies and procedures; and

d. allowing portfolio valuation and share pricing policies and procedures which benefited market timing

traders of Columbia Acorn's shares at the expense of long term shareholders.

55. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff Bridges and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against Columbia Trust and Columbia Fund Manager, as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Columbia Acorn for a period of more than fourteen days before redeeming or exchanging them during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiff and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

PLAINTIFF DEMANDS TRIAL BY JURY

[attorney name and address blocks omitted]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Cause No. 03-L-2036

AVERY JACKSON, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiffs,

v.

VAN KAMPEN SERIES FUND, INC. AND
VAN KAMPEN INVESTMENT ADVISORY CORP.,
Defendants.

[Filed Dec. 18, 2003]

COMPLAINT

Plaintiff, Avery Jackson, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for his complaint against Defendants Van Kampen Series Fund, Inc. and Van Kampen Investment Advisory Corp., states as follows:

1. Plaintiff, Avery Jackson, is a resident of South Roxanna, Madison County, Illinois.

2. Defendant, Van Kampen Series Fund, Inc. ("Van Kampen Funds"), is a Maryland corporation with its principal place of business in Oakbrook Terrace, IL. Van Kampen Funds is the registrant of the Van Kampen International Magnum Fund ("Van Kampen International"). Defendant Van Kampen Funds does business in the state of Illinois and is registered as a mutual fund in the State of Illinois. Defendant, Van Kampen Funds, has consented to the jurisdiction of Illinois courts. Defendant Van Kampen Funds at all times relevant herein has promoted, marketed, and sold shares to the investing public nationwide

including the state of Illinois. Defendant Van Kampen Funds maintains investor relationships nationwide including with shareholders in the state of Illinois. Defendant Van Kampen Funds has significant contacts with Madison County and the activities complained of herein occurred, in whole or part, in Madison County, Illinois.

3. Defendant, Van Kampen Investment Advisory Corp. ("Van Kampen Advisor") is a Delaware corporation with its principal place of business in Oakbrook Terrace, IL. The day-to-day tasks associated with running the business of Van Kampen International, such as investment management, share marketing, distribution, redemption, financial and regulatory reporting, and custodianship of funds are contracted out since it has no significant number of internal employees. Defendant Van Kampen Advisor has been contracted to serve as the investment manager for the Van Kampen International Magnum Fund. As the investment manager for Van Kampen International, Defendant Van Kampen Advisor selects the fund's investments and operates or supervises most phases of the fund's business including the valuing of the fund's portfolio securities and the fund net asset value. Defendant Van Kampen Advisor has significant contacts with fund shareholders in Madison County as a result of its operation and supervision of Van Kampen International's business and the activities complained of herein occurred, in whole or in part, in Madison County, Illinois. Defendant Van Kampen Advisor utilizes an interactive web site to communicate with fund shareholders, including those in Madison County, Illinois regarding the performance of the Fund and the investments it manages.

4. At all times relevant herein, Plaintiff, Avery Jackson, has owned and held shares in the Van Kampen International for the purpose of long term investing m international securities.

5. This Court has jurisdiction over the subject matter and the parties pursuant to 735 ILCS 5/2-209.

6. Venue is proper in this Court pursuant to 735 ILCS 5/2-101.

7. The foreign securities purchased by Defendants' fund for its portfolio are principally traded in securities markets outside of the United States.

8. Open end mutual funds such as Defendants' fund have been tremendously successful in convincing investors such as Plaintiff to hold their fund shares by urging investors to invest for the long term and by effectively marketing the various advantages of long term ownership of funds over direct investment including professional management, diversification, and liquidity.

9. Shares of open end mutual funds are sold to investors such as Plaintiff at a price based upon the net asset value ("NAV") per share plus applicable sales charges. Investors in shares may redeem their shares at the NAV of the shares less any redemption charges.

10. The share prices (NAV) of Defendants' mutual funds are set by deducting the fund liabilities from the total assets of the portfolio and then dividing by the number of outstanding shares.

11. Because the sales and redemption prices are based upon NAV, which m turn depends upon the fluctuating value of the fund's underlying portfolio of securities, Defendants recalculate the fund net asset value every business day. Defendants set the fund share price (NAV) once every business day at the close of trading on the New York Stock Exchange at 4:00 p.m. Eastern Time. The NAV of the shares is reported by Defendants to the National Association of Securities Dealers (NASD) for public distribution.

12. In valuing its underlying assets for purposes of setting the NAV, Defendants use the last trade price in the home market of each of the securities in its portfolio. A significant portion of the securities in the Defendants' fund portfolio are foreign securities. The home markets for such foreign securities include London, Paris, Frankfurt, Moscow, Singapore, Kuala Lumpur, Hong Kong, Taipei,

Tokyo and Sydney. These markets are located in time zones that are five hours to fifteen hours ahead of Eastern Standard Time.

13. Studies of world financial markets have established associations between the value changes among various markets. There is a positive correlation between value movements in the United States market and value movements in foreign markets. If the United States market experiences an upward movement in values, it can be predicted that Asian markets will move upward once trading begins their next day. The same upward movement can be predicted for European markets once trading begins their next day. Similarly, if the United States market experiences a downward movement in values, it can be predicted that Asian and European markets will move downward once trading begins their next day. Because of these positive correlations, the closing prices of the foreign securities in the underlying portfolio may not reflect current market values at the time Defendants set their fund NAV. Appropriate adjustments need to be made to the closing prices of the foreign securities in order to reflect current market values. Despite knowledge of the United States market result, continuous trading of the world equity indexes, ADRs, foreign currency futures markets and the correlations between the value of the fund's securities and these benchmarks, Defendants do not make any value adjustment to the portfolio's foreign securities prior to calculating fund NAV and setting share price every business day.

14. The positive correlation between the upward or downward movement of value in the United Stares market and subsequent movements in foreign markets around the world is between 0.7 and 0.8. A value of 0.0 equates to absolutely no correlation between value movements in United States markets and subsequent movements in foreign markets. A value of 1.0 equates to an absolute correlation between value movements in United States markets and subsequent value movements in foreign markets.

15. Studies of world financial markets demonstrate that the greater the percentage increase or decrease in the value of United States markets, the more likely foreign markets will post corresponding value movements on subsequent days. The probability that the value movements of foreign markets will follow the previous day's value movements in United States markets is directly correlated with the degree or extent of the value movement of United States markets.

16. Because many of the home markets for the foreign securities in the Defendants' asset portfolio last traded hours before the setting at 4:00 p.m. Eastern of the fund NAV, the closing prices used to calculate the NAV of Defendants' fund are stale and do not reflect price relevant information available subsequent in the foreign securities' last trades that will affect the value of such securities.

17. During the interval that elapses between the time that Defendants set the fund share NAV (and release it to the NASD for communication to the public) on consecutive days, the securities markets in Australia, Japan, Taiwan, Hong Kong, Malaysia, Singapore, Russia, Germany, France and the United Kingdom have traded for an entire session from open to close.

18. The exchange located in Sydney, Australia observes normal market trading hours of 10:00 a.m. and 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

19. The exchange located in Tokyo, Japan observes normal trading hours of 9:00 a.m. to 3:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 3:00 p.m. local time (2:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from

this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14 hours.

20. The exchange located in Taipei, Taiwan observes normal trading hours of 9:00 a.m. to 1:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 1:30 p.m. local time (1:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 14.5 hours.

21. The exchange located in Hong Kong observes normal trading hours of 10:00 a.m. to 4:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 4:00 p.m. local time (4:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 12 hours.

22. The exchange located in Kuala Lumpur, Malaysia observes normal trading hours of 9:30 a.m. to 5:00 p.m., local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

23. The exchange located in Singapore observes normal trading hours of 9:00 a.m. to 5:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 5:00 p.m. local time (5:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 11 hours.

24. The exchange located in Moscow, Russia observes normal trading hours of 12:00 p.m. to 7:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 7:00 p.m. local time (11:00 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 5 hours.

25. The exchange located in Frankfurt, Germany observes normal trading hours of 9:00 a.m. to 8:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 8:00 p.m. local time (2:00 p.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon closing prices for securities traded on this exchange that have been static for 2 hours.

26. The exchange located in Paris, France observes normal trading hours of 9:00 a.m. to 5:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at, 5:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange Defendants rely upon closing prices for securities traded on this exchange that have been static for 4.5 hours.

27. The exchange located in London, England observes normal market hours of 8:00 a.m. to 4:30 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted at 4:30 p.m. local time (11:30 a.m. Eastern time). When Defendants calculate their fund NAV using closing prices from this exchange, Defendants rely upon dosing prices for securities traded on this exchange that have been static for 4.5 hours.

28. A significant portion of the underlying foreign securities in the Defendants' fund portfolio are listed on foreign

exchanges and trade during each market's respective session. The NAVs set by Defendants do not take into account on a daily basis any price relevant information that has become available in this two to fourteen and one/half hour interval, after the final prices for the underlying foreign securities have been posted but, prior to the setting of the NAVs. Price relevant information, such as the continuous trading of world equity market indexes, ADRs, and foreign currency futures impacts the valuation of these underlying foreign securities and is significant for valuation because the final market prices have become stale and do not reflect the current market value of the securities.

29. By failing to make daily adjustments based upon positive correlations between upward or downward movements in United States and foreign markets and by choosing to use stale prices in valuing their fund shares and setting their daily NAVs, Defendants have exposed long term shareholders to market timing traders who regularly purchase and redeem Defendants' shares as part of a profitable trading strategy. The market timing trading strategy stems from the ability of market timing traders to predict changes in the NAV. Market timing traders are able to predict changes in the NAV because of the positive correlations between value movements in United States markets and foreign markets. The stale price strategy of market timers who trade Defendants' fund shares is to buy shares on days when the United States market moves up and to sell (redeem) shares when the United States market moves down. In order to derive maximum benefit from price relevant information developed subsequent to the now stale closing prices of the portfolio securities, market timers wait until the fund deadline for buying or selling (redeeming) shares in Defendants' funds on any particular business day. Because Defendants cannot buy or sell the foreign securities in the fund's underlying portfolio (due to the time difference between New York and the home markets of the foreign securities) at the time it sets the daily NAV that values the shares it issues and redeems, the

shares that Defendants issue to and redeem from market timers do not reflect current market prices of the foreign securities held by the fund.

30. Due to the use of stale prices by Defendants in valuing the fund shares, market timers who buy Defendants' fund shares on days when the United States market moves up are buying discounted shares at the expense of other fund shareholders because the funds underlying foreign securities assets are undervalued as of the time of the share purchase.

31. Due to the use of stale prices by Defendants in valuing their fund shares, market timers who sell (redeem) Defendants' fund shares on days when the United States market moves down are selling (redeeming) shares at a premium at the expense of other fund shareholders because the underlying foreign securities assets are overvalued as of the time of the share sale (redemption).

32. Shares in Defendants' fund can be traded, either by purchase or redemption, only once a day at 4:00 p.m. Eastern Time.

33. The excess profits that are obtained by market timing traders' taking advantage of the stale pricing of Defendants' fund shares come at the expense of fellow shareholders who are non-trading long term buy and hold investors. The transfer of wealth from the non-trading long term buy and hold shareholders to the market timers trading Defendants' fund shares occurs through dilution.

34. Market timing traders pay cash to Defendants' fund when they purchase discounted shares. Market timing traders receive cash from Defendants' fund when they sell (redeem) their shares at a premium. Long term shareholders suffer a dilution of their equity interests and voting rights in both instances. When market timing traders are able to buy shares at a discount, long term contract holders suffer dilution because the cash received by the fund for each of the shares purchased is less than the per share value of the underlying foreign securities due to the

stale pricing method utilized by Defendants. Likewise, when market timing traders are able to sell (redeem) shares at a premium, long term shareholders suffer dilution because the cash paid out by the fund for each of the shares redeemed is more than the per share value of the underlying securities, again due to the stale pricing method utilized by Defendants. In both instances, long term shareholders' equity interests and voting rights are diluted.

35. By failing to make daily adjustments based upon positive correlations between upward movements in United States and foreign markets, world equity index market trading, ADRs, and foreign currency futures and by choosing to use stale prices in valuing the underlying foreign securities that are used setting their daily NAV, Defendants give market timing traders the opportunity to earn risk free returns. Unlike other market timing based trading, market timers who trade Defendants' shares do not have to look into the future to time their purchases and redemptions of shares. Rather, they have the luxury of being able to look backwards because Defendants' share pricing fails to adjust for recognized positive correlations and uses stale prices in valuing its underlying portfolio securities.

36. Effective market timing captures an arbitrage profit that comes dollar-for-dollar out of the pockets of long-term investors. Besides the wealth transfer through dilution, the market timers also harm long term investors in other ways.

37. Plaintiff bring [*sic*] this complaint as a class action against Defendants Van Kampen Series Fund, Inc. and Van Kampen Investment Advisory Corp., and pursuant to § 5/2-801 et seq., of the Illinois Code of Civil Procedure individually and on behalf of a class of all persons in the United States who have held shares of Van Kampen International for more than fourteen days. The class period commences five years prior to the filing of this complaint through the date of filing. Excluded from the class are De-

fendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family members of any such person. Also excluded is any judge who may preside over this case.

38. Plaintiff is a member of the class and will fairly and adequately assert and protect the interests of the class. The interest of the Plaintiff is coincident with, and not antagonistic to, those of other members of the class. Plaintiff has retained attorneys who are experienced in class action litigation.

39. Members of the class are so numerous that joinder of all members is impracticable.

40. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

i. whether defendants failed to properly evaluate on a daily basis price relevant reformation available after the close of the exchange in which Van Kampen International's portfolio of securities trade, but before the setting of the daily NAV, which was likely to change the value of the securities and the setting of their daily NAV;

ii. whether defendants failed to properly implement Van Kampen International's portfolio valuation and share pricing policies and procedures making daily adjustments based upon United States market results and recognized positive correlations between upward movements in United States and foreign markets in the valuation of the fund's portfolio securities prior to the calculation of the fund NAV and setting of the share price;

iii. whether defendants failed to properly implement Van Kampen International's portfolio valuation and share pricing policies and procedures making

daily adjustments to stale closing prices of the underlying portfolio securities before the fund's NAV calculation and share price setting;

iv. whether defendants failed to protect Van Kampen International's long term shareholders from market timing traders using fund shares as a trading vehicle to earn profits at the expense of long term shareholders because of the failure of defendants to make daily adjustments, based upon known United States market results and recognized positive correlations between upward movements in United States and foreign markets, prior to the daily calculation of the fund NAV and the setting of share prices as well as their use of stale prices in the valuation of the fund's portfolio securities prior to the daily calculation of the fund NAV and the setting of share prices;

v. whether defendants breached the duties they owed to plaintiff and the class;

vi. whether plaintiff and the class have been damaged and, if so,

vii. the extent of such damages.

41. The prosecution of separate actions by individual members of the Class would create a risk of:

i. inconsistent or varying adjudications with respect to individual members of the class; and

ii. adjudication with respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

42. The class action method is appropriate for the fair and efficient prosecution of this action.

43. Individual litigation of all claims, which might be brought by all class members would produce a multiplicity

of cases so that the judicial system would be congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising from the conduct of the defendants.

Count I

Plaintiff, Avery Jackson, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for Count I of his Complaint against Defendants Van Kampen Funds and Van Kampen Advisor, states as follows:

44. Plaintiff repeat [*sic*] and incorporate [*sic*] by reference paragraphs 1 through 43 as if fully set forth herein.

45. Defendant Van Kampen Funds operates Van Kampen International as an open end mutual fund with the stated goal of providing long term capital growth to investors who hold shares of the fund. The fund expressly states in its prospectus that it seeks to achieve its investment goal through a policy of investing in stocks and debt obligations of companies outside of the United States.

46. Defendant Van Kampen Advisor serves as the investment manager for Van Kampen International. Defendant Van Kampen Advisor provides, among other things, portfolio management services and selects the securities for Van Kampen International to buy, hold or sell. Van Kampen International pays Defendant Van Kampen Advisor set fees based on the percentage of assets under management for managing Van Kampen International's assets. Defendant Van Kampen Advisor's compensation and management of the Van Kampen International are required to be reviewed and approved by Defendant Van Kampen Funds' board of trustees.

47. At all times relevant hereto, Plaintiff Avery Jackson has held shares in Van Kampen International.

48. At all times relevant herein, Defendants had a duty when valuing the fund's securities and determining daily

NAV to utilize accurate current market values for such securities in order to avoid dilution in the value of long term shareholders' equity interests and voting rights.

49. Defendants breached their duties of due care owed to Plaintiff Avery Jackson and similarly situated shareholders of the Van Kampen International by, inter alia:

i. failing to properly evaluate on a daily basis price relevant information available after the close of the exchange on which Van Kampen International's portfolio of securities trade, but before the setting of the NAV, which was likely to change the value of the securities and the setting of their NAV;

ii. failing to properly adjust the value of Van Kampen International's portfolio securities and the setting of their NAV's when price relevant information available after the close of the exchange on which the portfolio's securities trade, but before the setting of the NAV, indicated a change in the value of the securities: and

iii. allowing portfolio valuation and share pricing policies and procedures which benefitted market timing traders of Van Kampen International's shares at the expense of long term shareholders.

50. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff Avery Jackson and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, attorneys' fees and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against Van Kampen International and Van Kampen Investment Advisory Corp., as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

All persons in the United States who held shares in the Van Kampen International for a period of more than fourteen days during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiff and the Class compensatory damages, prejudgment interest, costs of suits, and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

Count II

Plaintiff, Avery Jackson, individually and on behalf of all others similarly situated, by and through his undersigned counsel, and for Count II of his Complaint against Defendants Van Kampen Funds and Van Kampen Advisor, states as follows:

51. Plaintiff repeat [*sic*] and incorporate [*sic*] by reference paragraphs 1 through 48 as if fully set forth herein.

52. Defendants knew, or were negligent in not knowing, that the closing prices for the foreign securities held by Van Kampen International and used by Defendants to calculate NAV for said Fund did not represent current market value because, inter alia, those prices did not reflect changes in the fund's securities which occurred after the exchange on which those foreign securities trade closed and before defendants calculated NAV and share price.

53. With utter indifference or conscious disregard for Plaintiff Avery Jackson's investment and the investments of similarly situated fund shareholders, Defendants breached their duties to Plaintiff Avery Jackson and similarly situated shareholders by, inter alia:

i. failing to properly evaluate on a daily basis price relevant information available after the close of the exchange on which Van Kampen International's portfolio of securities trade, but before the setting

of the NAV, which was likely to change the value of the securities and the setting of their NAV;

ii. failing to properly adjust the value of Van Kampen International's portfolio of securities and the setting of their NAV when price relevant information available after the close of the exchange on which the portfolio's securities trade, but before the setting of the NAV, indicated a change in the value of the securities;

iii. failing to implement Van Kampen International's portfolio valuation and share pricing policies and procedures; and

iv. allowing portfolio valuation and share pricing policies and procedures which benefitted market timing traders of Van Kampen International's shares at the expense of long term shareholders.

54. As a direct and proximate result of the Defendants' breach of their duties, Plaintiff Avery Jackson and the class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against Van Kampen Series Fund, Inc. and Van Kampen Investment Advisory Corp., as follows:

A. Ordering that this action be maintained as a class action pursuant to 735 ILCS 5/2 801 and the following class be certified:

> All persons in the United States who held shares in the Van Kampen International for a period of more than fourteen days during the period beginning from five years prior to and through the date of the filing of this complaint;

B. Awarding Plaintiff and the Class compensatory damages, prejudgment interest, costs of suits, punitive damages and attorneys' fees for an amount representing the damages caused by Defendants' breach of their duties not to exceed $75,000 per plaintiff or class member.

[attorney name and address blocks omitted]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Cause No. 04-L-241

TERRY SPURGEON, AS CUSTODIAN FOR THE BENEFIT OF JAMES E. SPURGEON, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiff.

v.

PACIFIC LIFE INSURANCE COMPANY,
Defendant.

[Filed Mar. 12, 2004]

COMPLAINT

Plaintiff Terry Spurgeon, as custodian for the benefit of James E. Spurgeon and on behalf of others similarly situated, states as follows for his Complaint against Pacific Life Insurance Company ("Pacific Life"):

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff Terry Spurgeon is a resident of Moro, Illinois, in Madison County.

2. At all times relevant to this Complaint, Plaintiff owned a Pacific Life Individual Flexible Premium Deferred Variable Annuity which he purchased for the benefit of his then-minor son, James E. Spurgeon pursuant to the Uniform Gifts to Minors Act.

3. Pacific Life is a California corporation with its principal place of business in Newport Beach, California.

4. Pacific Life is licensed to sell insurance products in Illinois, and at all times relevant to this Complaint, Pacific

Life has promoted, marketed, and sold insurance and variable annuities to the investing public nationwide, including in Madison County, Illinois.

5. Pacific Life maintains investor relationships with clients in Madison County, Illinois, communicates regularly with them by mail and maintains an interactive website to communicate with clients, including clients in Madison County.

6. The transactions which are the subject of this Complaint occurred in part in Madison County, Illinois.

7. This Court therefore has jurisdiction over Pacific Life pursuant to 735 ILCS § 5/2-209, and venue is proper in this County pursuant to 735 ILCS § 5/2-101.

PACIFIC LIFE'S VARIABLE ANNUITY FUNDS

8. Issuers of variable annuities like Pacific Life have marketed the advantages of long-term investment through variable annuities (such as professional management, diversification, insurance protection and tax deferral) over direct investment in securities.

9. A Pacific Life annuity, such as the Pacific Life Individual Flexible Premium Deferred Variable Annuity, is a contract between an investor and Pacific Life, in which the investor agrees to make at least one minimum premium payment to Pacific Life in return for a series of annuity payments at a later date.

10. The Pacific Life annuities which are the subject of this Complaint are those which consist of a "separate account" which keeps investors' assets separate from Pacific Life's assets, and each annuity's separate account is further divided into multiple sub-accounts. Each sub-account corresponds to a single mutual fund, and Pacific Life invests the assets of each sub-account in that sub-account's corresponding mutual fund. These mutual funds are maintained exclusively for variable annuity or variable life insurance products, although they often bear names very similar to those of retail mutual funds.

11. An investor may allocate his premium payment and accumulated proceeds in the variable annuity among one or more of the various sub-accounts.

12. Different Pacific Life annuities permit investment in some of the same sub-accounts, meaning that owners of different annuities may nevertheless be invested in the same sub-accounts.

13. When an investor allocates any portion of a premium payment or accumulated proceeds to a sub-account, Pacific Life credits that sub-account with sub-account "units."

14. Units in Pacific Life's sub-accounts can be traded, either by purchase or redemption, only once a day at 4:00 p.m. Eastern Time.

15. Sub-account units are sold at a price based upon the sub-account "unit value" (UV) plus applicable sales charges. Units of the sub-accounts may be redeemed at the UV less any redemption or surrender charges. The UV is the value of a single accumulation unit in a sub-account.

16. The number of accumulation units an investor receives is determined when he allocates some or all of a premium payment or accumulated proceeds to a sub-account. The number of units is determined by dividing the amount of the premium payment or accumulated proceeds allocated to the sub-account by the UV of one unit of that sub-account.

17. The initial UV of each sub-account was $10 on the trading day the sub-account began operations.

18. Pacific Life establishes a new daily UV for each sub-account once every trading day at the close of trading on the New York Stock Exchange at 4:00 p.m. Eastern Time.

19. Pacific Life establishes the daily UV for each sub-account by multiplying each sub-account's UV for the prior trading day by a "net investment factor."

20. The "net investment factor" equals the quotient obtained by dividing the per share value of the assets of that sub-account (A) as of the end of that valuation period by the net asset value per share of the corresponding mutual fund as of the end of the preceding valuation period (B), minus certain daily charges, fees and deductions (C) (*i.e.*, net investment factor = (A / B) - C). A valuation period is the period between a trading day and the immediately preceding trading day.

21. Because a sub-account's UV is based upon the per share value of the underlying mutual fund, the value of an investor's sub-account units is subject to change much the same way that the value of a mutual fund share changes each day. The value of an investor's sub-account units will fluctuate as the value of the corresponding mutual fund fluctuates.

22. The mutual funds in which Pacific Life invests sub-account assets are managed by fund managers with which Pacific Life contracts.

23. The fund managers handle the day-to-day tasks associated with managing an investment portfolio, such as investment management and valuation of the mutual fund's underlying portfolio of securities.

24. At the end of each trading day, the assets of the mutual fund are valuated, and a "net asset value" is established for the mutual fund. That net asset value is the same net asset value Pacific Life uses to establish the corresponding sub-account's daily UV.

PACIFIC LIFE'S SUB-ACCOUNTS' UNDERLYTNG PORTFOLIOS INCLUDE FOREIGN MUTUAL FUNDS

25. Some of the mutual funds in which the annuity sub-accounts are invested include in their portfolios securities which are traded in markets outside of the United States.

26. In valuing the assets of a mutual fund, the fund manager uses the last trade price in the home market of each of the securities in its portfolio. The home markets for such foreign securities include London, Paris, Frankfurt, Moscow, Singapore, Kuala Lumpur, Hong Kong, Taipei, Tokyo and Sydney. These markets are located in time zones that are five to fifteen hours ahead of Eastern Time.

27. Thus, a five to fifteen hour interval elapses between the close of the foreign securities markets and Pacific Life's calculation of its sub-account's UVs.

28. For example, the exchange located in Tokyo, Japan observes normal trading hours of 9:00 a.m. to 3:00 p.m. local time. Active trading of securities traded on this exchange ends, and closing prices for those securities are posted, at 3:00 p.m. local time (2:00 a.m. Eastern time). When the mutual fund calculates the value of its portfolio securities using closing prices from this exchange and Pacific Life sets its sub-account UV based upon those values, Pacific Life relies upon closing prices for securities traded on this exchange that have been static for 14 hours.

29. Studies of world financial markets have established associations between the value changes among various markets. There is a positive correlation between value movements in the U.S. markets and value movements in foreign markets. If the U.S. markets experience an upward movement in values, it can be predicted that Asian markets will move upward once trading begins the next day. The same upward movement can be predicted for European markets once trading begins the next day. Similarly, if the U.S. markets experience a downward movement in values, it can be predicted that Asian and Euro-

pean markets will move downward once trading begins the next day.

30. Studies also demonstrate that the greater th percentage increase or decrease in the value of U.S. markets, the more likely foreign markets will post corresponding value movements on the subsequent trading day. The probability that the value movements of foreign markets will follow the previous day's value movements in U.S. markets is directly correlated to the degree or extent of the value movement of U.S. markets.

PACIFIC LIFE EXPOSES INVESTORS TO MARKET TIMING TRADING

31. A significant portion of the underlying securities in the mutual fund portfolios associated with the Pacific Life sub-accounts are listed on foreign exchanges and trade during each market's respective session. The share values set by these mutual funds and used by Pacific Life in setting its UV do not take into account on a daily basis any price relevant information (such as value movements in the U.S. markets, changes in world equity market indices, changes in the value of American Depository Receipts (ADRs), and fluctuations in foreign currency futures markets) that has become available in the interval between the close of the foreign markets and the calculation of the UV. Such price relevant information impacts the valuation of the underlying securities in the mutual funds in which sub-account proceeds are invested and the subsequent calculation of the sub-accounts' UVs. Such price relevant information is significant because the final market prices of the foreign securities often have become stale and no longer accurately reflect the true current market value of the securities.

32. By failing to make daily adjustments based upon the direction and degree of correlations between movements in U.S. and foreign markets, changes in world equity market indices, changes in the value of ADRs, and fluctuations in foreign currency futures markets, and by

calculating sub-account UVs based upon the corresponding mutual funds' net asset values which, in turn, are based upon the stale prices of foreign securities in the mutual funds' portfolios, Pacific Life has exposed long-term annuity owners to market timing traders who regularly purchase and redeem units of Pacific Life's sub-accounts as part of a profitable, stale-price trading strategy.

33. Market timing trading strategy is a short-term trading strategy which takes advantage of the stale pricing of the foreign securities upon which the sub-accounts' UVs are based, enabling such traders to predict changes in the UVs as a result of price relevant events that occur after the close of foreign securities markets and before Pacific Life calculates the sub-accounts' daily UVs. Market timing traders are able to predict changes in sub-account UVs because of the positive directional and degree of correlations between movements in U.S. and foreign markets, changes in world equity market indices, changes in the value of ADRs, and fluctuations in foreign currency futures markets.

34. The stale price strategy of market timers who trade in units of Pacific Life's sub-accounts is to buy units on days when the U.S. markets move up and to redeem units when the U.S. markets move down. In order to derive maximum benefit from price relevant information developed subsequent to the now stale closing prices of the portfolio securities, market timers wait until the variable annuity's deadline for buying or redeeming units in Pacific Life's sub-accounts on any particular business day. Because Pacific Life cannot make an investment in the underlying mutual fund and the mutual fund cannot buy or sell the foreign securities in its underlying portfolio (due to the time difference between New York and the home markets of the foreign securities) at the time Pacific Life sets the daily UV, the units that Pacific Life issues to and redeems from market timers do not reflect the actual value of the foreign securities held in the portfolio of the corresponding mutual fund.

35. Due to Pacific Life's use of mutual fund net asset values which are based upon stale prices of foreign securities, market timers who buy Pacific Life's sub-account units on days when the U.S. markets move up are buying discounted units and thereby dilute the ownership interests of other sub-account holders because the sub-accounts' underlying foreign securities assets are undervalued as of the time of the unit purchase.

36. Due to Pacific Life's use of mutual fund net asset values which are based upon stale prices of foreign securities, market timers who redeem Pacific Life's units on days when the U.S. markets move down are redeeming units at a premium and thereby dilute the ownership interests of other sub-account holders because the underlying foreign securities assets are overvalued as of the time of the unit redemption.

37. The excess profits that market timing traders obtain take advantage of the stale pricing of Pacific Life's sub-accounts and dilute the ownership interests of other sub-account holders. When market timing traders buy units at stale, discounted prices, the ownership interests of other sub-account holders are diluted because the market timer has unfairly become, per unit, an equal sub-account owner with existing owners per unit. When market timing traders later redeem those units at a premium, the prior dilution of other sub-account holders' ownership interests is made permanent and, if the UV is then artificially inflated as a result of Pacific Life's UV calculation practices, may further dilute other sub-account holders' ownership interests. Long-term sub-account holders suffer a dilution in their ownership interests and the wealth represented by that diluted amount is transferred from them to market timing traders. Thus, the market timing trades capture an arbitrage profit that comes dollar-for-dollar out of the pockets of the investors.

CLASS ACTION ALLEGATIONS

38. Through his ownership of the Pacific Life Individual Flexible Premium Deferred Variable Annuity, Plaintiff at all times relevant to this Complaint held units in the Lazard International Value Fund sub-account for the purpose of long-term investment.

39. Plaintiff brings this class action on behalf of himself and on behalf of a class of all persons in the United States who, through their ownership of an Pacific Life annuity or insurance products, held units of any Pacific Life sub-account invested in mutual funds which included foreign securities in their portfolios and which experienced market timing trading activity. Excluded from the Class are Pacific Life and any of its parent, subsidiary or affiliated corporations, as well as any of their controlled persons, officers, directors, agents, servants or employees, and the immediate family members of any such person; any judge who may preside over this case; all persons who have claims in excess of $75,000; and any investor who engaged in market timing trading in the Pacific Life sub-accounts which are the subject of this Complaint.

40. Excluded from this Complaint are any claims based upon Pacific Life's conduct in connection with Plaintiff's or any class member's purchase or sale of any Pacific Life annuity product or units in any Pacific Life sub-account.

41. Plaintiff is a member of the Class and will fairly and adequately assert and protect the interests of the Class. Plaintiff's interests are coincident with, and not antagonistic to, those of other class members.

42. Plaintiff has retained attorneys who are experienced in class action litigation.

43. Members of the Class are so numerous and geographically dispersed that joinder of all members is impracticable. While Plaintiff cannot ascertain the exact number and identity of class members prior to discovery, on information and belief, there are thousands of class

members and their identity can be ascertained from Pacific Life's books and records.

44. There are questions of law or fact common to the Class.

45. Those common questions predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

a. whether Pacific Life negligently failed to evaluate on a daily basis price relevant information available after the close of the exchanges in which the securities held by the mutual funds' portfolios trade, but before the setting of the daily UV, which was likely to change the value of the mutual fund securities and thus sub-account UVs;

b. whether Pacific Life negligently failed to implement valuation and pricing policies and procedures which account for price relevant events occurring after the close of the exchanges in which the securities held by the mutual funds' portfolios trade, but before the setting of the daily UV, when calculating the UV when closing prices of mutual fund portfolio securities did not reflect their true market values;

c. whether Pacific Life negligently failed to protect its sub-account holders from market timing trading;

d. whether Pacific Life breached its fiduciary obligations to Plaintiff and the Class by failing to evaluate on a daily basis price relevant information available after the close of the exchanges in which the securities held by the mutual funds' portfolios trade, but before the setting of the daily UV, which was likely to change the value of the mutual fund securities and thus sub-account UVs;

e. whether Pacific Life breached its fiduciary obligations to Plaintiff and the Class by failing to implement valuation and pricing policies and procedures

which account for price relevant events occurring after the close of the exchanges in which the securities held by the mutual funds' portfolios trade, but before the setting of the daily UV, when calculating the UV whenever closing prices of mutual fund portfolio securities did not reflect their true market values;

f. whether Pacific Life breached its fiduciary obligations to Plaintiff and the Class by failing to implement valuation and pricing policies that use price relevant information to value mutual fund portfolio securities and sub-account UVs whenever closing prices of the securities held by the mutual funds' portfolios did not reflect their true market values;

g. whether Pacific Life breached its fiduciary obligations to Plaintiff and the Class by failing to protect Pacific Life sub-account holders from market timing trading;

h. whether Plaintiff and the Class have sustained damages as a result of Pacific Life's conduct; and/or

i. the proper measure of any such damages.

46. The prosecution of separate actions by individual members of the Class would create a risk of:

a. inconsistent or varying adjudications with respect to individual members of the Class; and/or

b. adjudication with the respect to individual members of the class, which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protest their interest.

47. The class action method is appropriate for the fair and efficient prosecution of this action.

48. Individual litigation of all claims, which might be brought by all class members, would produce a multiplicity of cases so that the judicial system would be congested

for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising from the conduct of Pacific Life.

COUNT I

49. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 as if fully set forth herein.

50. Pacific Life directly or impliedly held itself out as a skilled specialist in the field of investment management, possessing the specialized knowledge, skill and care ordinarily used by reasonably well-qualified members of the investment management profession.

51. It thereby became Pacific Life's duty to exercise that degree of knowledge, skill and care ordinarily used, or which should be used, by reasonably well-qualified members of the investment management profession, including but not limited to the duties:

a. to use mutual fund share values predicated upon accurate market values when valuing sub-accounts and setting their daily UV's; and/or

b. to prevent market timing trading in sub-accounts to prevent the dilution of the ownership interests of long-term investors.

52. Pacific Life knew or should have known that the closing prices for the foreign securities held in its sub-accounts' corresponding mutual funds' portfolios did not represent accurate market values of those foreign securities whenever price relevant events had occurred after the closing of foreign securities markets but before Pacific Life's calculation of daily UVs.

53. Pacific Life was negligent in one or more of the following ways:

a. failing to evaluate on a daily basis price relevant information available to Pacific Life after the close

of foreign securities markets in which the underlying mutual funds' portfolios of securities traded;

b. failing to adjust calculation of the daily UV to take into account any changes in value of the foreign securities held in the underlying mutual funds' portfolios whenever price relevant events occurred after the closing of the foreign securities markets but before Pacific Life's calculation of daily UVs;

c. failing to implement Pacific Life's valuation and unit pricing policies and procedures;

d. using valuation and unit pricing policies and procedures which benefited market timing traders of Pacific Life's sub-accounts at the expense of long-term sub-account holders; and/or

e. by favoring certain investors and permitting them to engage in market timing trading at the expense of other investors, namely Plaintiff and the Class.

54. As a direct and proximate result of Pacific Life's negligence, Plaintiff and the Class have suffered damages in the amount to be proven at trial, but less than $75,000 per Plaintiff or Class member, including all compensatory damages and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against PACIFIC LIFE INSURANCE COMPANY: ordering that this action be maintained as a class action pursuant to 735 ILCS § 5/2-801 and certifying an appropriate class; and awarding Plaintiff and the Class compensatory damages, attorney's fees, prejudgment interest, and costs of suit in an amount not to exceed $75,000 per plaintiff or class member. Plaintiff demands a trial by jury on all issues so triable.

COUNT II

55. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 and 50 through 51 as if fully set forth herein.

56. Pacific Life knew or was recklessly indifferent to the fact that the closing prices for the foreign securities held in its sub-accounts' corresponding mutual funds' portfolios did not represent accurate market values of those foreign securities whenever price relevant events had occurred after the closing of foreign securities markets and before Pacific Life's calculation of the daily UVs.

57. Pacific Life knowingly or with utter indifference to and conscious disregard for the rights of Plaintiff and the Class willfully and wantonly engaged in one or more of the following acts or omissions:

a. failing to evaluate on a daily basis price relevant information available to Pacific Life after the close of foreign securities markets in which the underlying mutual funds' portfolios of securities traded;

b. failing to adjust calculation of the daily UV to take into account any changes in value of the foreign securities held in the underlying mutual funds' portfolios whenever price relevant events occurred after the closing of the foreign securities markets but before Pacific Life's calculation of daily UVs;

c. failing to implement Pacific Life's valuation and unit pricing policies and procedures;

d. using valuation and unit pricing policies and procedures which benefited market timing traders of Pacific Life's sub-accounts at the expense of long-term sub-account holders; and/or

e. by favoring certain investors and permitting them to engage in market timing trading at the expense of other investors, namely Plaintiff and the Class.

58. As a direct and proximate result of Pacific Life's foregoing conduct, Plaintiff and the Class have suffered damages in the amount to be proven at trial, but less than $75,000 per Plaintiff or Class member, including all compensatory damages and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against PACIFIC LIFE INSURANCE COMPANY; ordering that this action be maintained as a class action pursuant to 735 ILCS § 5/2-801 and certifying an appropriate class; and awarding Plaintiff and the Class compensatory and punitive damages, attorney's fees, prejudgment interest, and costs of suit in an amount not to exceed $75,000 per plaintiff or class member. Plaintiff demands a trial by jury on all triable issues.

COUNT III

59. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 and 50 through 51 as if fully set forth herein.

60. A special relationship existed between Pacific Life and Plaintiff and the Class as a result of the following:

a. Pacific Life is a stock corporation. The shareholders select the board of directors who will manage Pacific Life's assets, and the directors act as fiduciaries in managing Plaintiff's and Class' funds;

b. Pacific Life assumed a position of trust and confidence by servicing and managing Plaintiff's and class members' investments in Pacific Life annuities;

c. The calculation of the UV was within the exclusive control of Pacific Life;

d. Whether market timing was allowed to occur in the sub-accounts was within the exclusive control of Pacific Life;

e. Because Pacific Life's variable annuities were contracts of adhesion prepared by Pacific Life and not subject to negotiation, unequal bargaining power existed between Plaintiff and class members and Pacific Life;

f. Pacific Life and its agents held themselves out as highly-skilled insurance and financial experts, possessing the special knowledge and expertise needed to interpret and understand the complex and sophisticated daily management of annuity investments; and/or

g. Pacific Life is an insurer characterized by elements of public interest which subject it to more stringent standards of conduct than those normally arising out of contract.

61. As a result of the foregoing, Pacific Life was a fiduciary to Plaintiff and Class members, and Pacific Life owed Plaintiff and the Class certain fiduciary duties.

62. Pacific Life breached its fiduciary duties to Plaintiff and the Class in one or more of the following ways:

a. exposing Plaintiff's and the Class' ownership interests in the sub-accounts to dilution through market timing trading by failing to evaluate on a daily basis price relevant information available to Pacific Life after the close of foreign securities markets in which the underlying mutual funds' portfolios of securities traded;

b. exposing Plaintiff's and the Class' ownership interests in the sub-accounts to dilution through market timing trading by failing to adjust calculation of the daily UV to take into account any changes in value of the foreign securities held in the underlying mutual funds' portfolios whenever price relevant events occurred after the closing of the foreign securities markets but before Pacific Life's calculation of daily UVs;

c. exposing Plaintiff's and the Class' ownership interests in the sub-accounts to dilution through market timing trading by failing to implement Pacific Life's valuation and unit pricing policies and procedures;

d. exposing Plaintiff's and the Class' ownership interests in the sub-accounts to dilution through market timing trading by using valuation and unit pricing policies and procedures which benefited market timing traders of Pacific Life's sub-accounts at the expense of long-term sub-account holders;

e. by failing to provide complete and truthful information to Plaintiff and the Class regarding Pacific Life's allowance of market timing activities in Pacific Life sub-accounts;

f. by failing to provide complete and truthful information to Plaintiff and the Class regarding the dilution of their holdings due to Pacific Life's failure to use accurate market values of foreign securities held in the underlying mutual funds' portfolios when setting daily UV's; and/or

g. by favoring certain investors and permitting them to engage in market timing trading at the expense of other investors, namely Plaintiff and the Class.

63. As a direct and proximate result of Pacific Life's breaches of fiduciary duties, Plaintiff and the Class have suffered damages in the amount to be proven at trial, but less than $75,000 per plaintiff or class member, including all compensatory damages and costs.

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment in their favor and against PACIFIC LIFE INSURANCE COMPANY; ordering that this action be maintained as a class action pursuant to 735 ILCS § 5/2-801 and certifying an appropriate class; and awarding Plaintiff and the Class compensatory and punitive damages, attorney's fees, prejudgment interest, and costs of suit in an amount not to exceed $75,000 per plaintiff or class member. Plaintiff demands a trial by jury on all issues so triable.

COUNT IV

64. Plaintiff repeats and incorporates by reference paragraphs 1 through 63 as if fully set forth herein.

65. Pacific Life's valuation and unit pricing policies and practices which are the subject of this Complaint were conceived and emanated from California.

66. Because Pacific Life is a California corporation with its principal place of business in California and because Pacific Life's valuation and unit pricing policies and practices which are the subject of this Complaint were conceived in and emanated from California, Pacific Life is subject to the provisions of Cal. Bus. & Prof. Code § 17200 *et seq.*

67. California Bus. & Prof. Code § 17200 prohibits any "unlawful . . . business act or practice." Pacific Life has violated Cal. Bus. & Prof. Code § 17200's prohibition against engaging in an unlawful act or practice by violating the common law as alleged in Counts I through III of this Complaint.

68. Plaintiff reserves the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

69. California Bus. & Prof. Code § 17200 also prohibits any "unfair . . . business act or practice." As detailed in the preceding paragraphs, Pacific Life engaged in conduct that is unfair within the meaning of Cal. Bus. & Prof. Code § 17200 *et seq.* Pacific Life's practices offend public policy and are unethical, oppressive, unscrupulous and violate the laws identified herein and the policies supporting those laws.

70. Pacific Life's conduct caused and continues to cause substantial injury to Plaintiff and Class members.

71. The justifications, if any, for Pacific Life's wrongful conduct were and are vastly outweighed by the adverse effects of such conduct.

72. Finally, there were reasonably available alternatives to Pacific Life to further its business interests, other than the acts and omissions described in this Complaint. As a result, Pacific Life engaged in unfair business practices prohibited by Cal. Bus. & Prof. Code § 17200 *et seq.*

73. California Bus. & Prof. Code § 17200 also prohibits any "fraudulent business act or practice." Pacific Life's acts and omissions, as more fully set forth elsewhere in this Complaint, were fraudulent within the meaning of Cal. Bus. & Prof. Code § 17200, and were likely to deceive the public, Plaintiff and Class members. Pacific Life's fraudulent conduct constitutes a fraudulent business act or practice within the meaning of Cal. Bus. & Prof. Code § 17200 *et seq.*

74. Pacific Life engaged in these unlawful, unfair and fraudulent business acts and practices with others who participated, in whole and in part, in the conduct alleged.

75. As a result of the foregoing conduct, Pacific Life and any co-participants have been unjustly enriched at the expense of plaintiff and Class members.

76. As a co-participant in the violation of Cal. Bus. & Prof. Code § 17200 *et seq.*, Pacific Life is jointly and severally liable for the restoration to any person of any and all money that has been acquired by means of the alleged violations of Cal. Bus. & Prof. Code § 17200 *et seq.*

77. The unlawful, unfair, and fraudulent business practices of Defendant described above present a continuing threat to members of the public in that Defendant continues to engage in the conduct described herein.

WHEREFORE, Plaintiff and the Class pray that the Court order that this action be maintained as a class action pursuant to 735 ILCS § 5/2-801 and certify an appropriate class; grant restitution to Plaintiff and the Class by

ordering Defendant PACIFIC LIFE INSURANCE COMPANY to return to Plaintiff and the Class all sums unlawfully and unfairly obtained from them as the result of Pacific Life's unfair and unlawful business practices in an amount not to exceed $75,000 per plaintiff or class member; and order Defendant PACIFIC LIFE INSURANCE COMPANY to pay to Plaintiffs and the Class all costs of suit, attorneys' fees, prejudgment interest and any other relief the Court deems appropriate under the circumstances in accordance with section 17200 of the California Business and Professions Code.

[attorney name and address blocks omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 03-CV-0673-DRH

T.K. PARTHASARATHY, EDMUND WOODBURY, STUART ALLEN SMITH, AND SHARON SMITH, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

T. ROWE PRICE INTERNATIONAL FUNDS, INC., A CORPORATION, T. ROWE PRICE INTERNATIONAL, INC., ARTISAN FUNDS, INC., A CORPORATION, ARTISAN PARTNERS LIMITED PARTNERSHIP, AIM INTERNATIONAL FUNDS, INC., A CORPORATION, AND AIM ADVISORS, INC.,

Defendants.

[Filed Oct. 16, 2003]

Notice of Removal

Defendants T. Rowe Price International Funds, Inc., T. Rowe Price International Inc., AIM International Funds, Inc. and A I M Advisors, Inc., pursuant to 28 U.S.C. §§ 1441 and 1446(a), hereby give notice of their removal of this action from the Circuit Court of Madison County in the State of Illinois to the United States District Court for the Southern District of Illinois, and in support thereof state as follows:

1. The Summons and Complaint in this action were filed on September 16, 2003 in the Circuit Court of Madison County in the State of Illinois.

2. The Summons and Complaint were served on T. Rowe Price International Funds, Inc. and T. Rowe Price International, Inc. in Maryland and on AIM International Funds, Inc. and A I M Advisors, Inc. in Texas on September 23, 2003. No other defendant was served with a Summons and Complaint prior to that date. Copies of the Summons and Complaint are attached as Exhibit A. A Motion for Leave to Amend and a First Amended Complaint (hereinafter, sometimes, "Cplt.") were subsequently filed on October 3, 2003, pursuant to an Order of the Circuit Court of Madison County, dated October 3, 2003. Copies of the Motion, First Amended Complaint and Order are attached as Exhibit B.

3. Other than the filing and service of the Summons and Complaint and the First Amended Complaint and said Order, no activity has taken place in this action.

4. This Court has original jurisdiction over the subject matter of this action on any and all of the following grounds:

a. diversity of citizenship: this Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332, in that (1) plaintiffs and defendants are (and were at the time of filing) citizens of different states; and (2) the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs. As explained further below, the claims asserted in the First Amended Complaint are derivative claims, not individual claims, and, accordingly, the amount in controversy exceeds $75,000 exclusive of interest and costs.

b. federal question: further, if and to the extent that any portion of the claims asserted by plaintiffs are individual claims, they would be claims in connection with the purchase or sale of securities, and therefore exist only (if at all) under the federal securities laws. As provided in the Securities Litigation Uniform Standards Act of 1998, 15 U.S.C. § 78bb(f), there can be no state law class claims as to such matters, and any state court

action in which a plaintiff is attempting to assert such class claims is removable to federal court. Such claims present a federal question as to which this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. See also: 28 U.S.C. § 1441(b). In addition, this Court can and should, if necessary, exercise supplemental jurisdiction, pursuant to 28 U.S.C. §§ 1441(c) and 1367, as to any such claims that may exist under state law.

c. federal question: the Court also possesses jurisdiction over this action pursuant to Section 44 of the Investment Company Act of 1940, 15 U.S.C. § 80a-43, which vests the district courts of the United States with jurisdiction "of all suits in equity and actions at law brought to enforce any liability or duty created by . . . this subchapter or the rules, regulations, or orders hereunder" issued by the SEC. The claims asserted by plaintiffs are "rooted in" and preempted by federal law. The SEC comprehensively regulates the subject matter of this action, i.e. fair value pricing of mutual funds. Plaintiffs, themselves, recognize this point. See e.g. Cplt. paras. 63, 76, 89: "On or about January 1, 1965, applicable published regulations [of the SEC] expressly recognized that changes in trading prices of securities in the . . . Fund might occur daily after the closing of the New York Stock Exchange." Counts II, IV and VI of the First Amended Complaint are based on violation of these SEC regulations. The claims asserted by plaintiffs involve the interpretation and application of federal law, and thus (if they exist at all) present a federal question as to which this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. In addition, if and to the extent that Counts I, III and V allege state law claims, as noted above the Court can and should exercise supplemental jurisdiction as to those Counts, since the nucleus of alleged facts is the same as in Counts II, IV and VI.

5. Plaintiffs' action, although styled by them as a "class action", is actually a derivative action on behalf of the Funds in which they owned shares. Any injury allegedly suffered by the four plaintiffs derived from and was not distinct from the alleged injury suffered by the Fund in which he or she held shares. In the words of Judge Easterbrook, any injury suffered by any plaintiff was "mediated through" the Fund, and was not distinct from the injury suffered generally by all shareholders as owners of the Fund's shares.[1]

6. Plaintiffs' citizenship and defendants' states of incorporation or, in the case of a limited partnership, organization and principal places of business are (and were at the time of filing) as follows:

a. Plaintiffs

Plaintiffs T.K. Parthasarathy, Edmund Woodbury, and Stuart Allen Smith and Sharon Smith, according to the First Amended Complaint, are each citizens of the State of Illinois and investors, respectively, in Artisan International Fund, T. Rowe Price International Stock Fund, and AIM European Growth Fund. Cplt., paras. 1, 2, 3 and 4; and

b. Defendants

(1) Defendant T. Rowe Price International Funds, Inc. is a Maryland corporation with its principal place of business in Baltimore, Maryland. Cplt., para. 5.

(2) Defendant T. Rowe Price International, Inc. is a Maryland corporation with its principal place of business in Baltimore, Maryland. Cplt., caption.

(3) Defendant Artisan Funds, Inc. is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin. Cplt., para. 7.

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[1] See Bagdon v. Bridgestone/Firestone, Inc., 916 F.2d 379, 381 (7th Cir. 1990).

(4) Defendant Artisan Partners Limited Partnership is a Delaware partnership with its principal place of business in Milwaukee, Wisconsin. Cplt., para. 8.

(5) Defendant AIM International Funds, Inc. is a Maryland corporation with its principal place of business in Houston, Texas. Cplt., para. 9.

(6) Defendant A I M Advisors, Inc. is a Delaware corporation with its principal place of business in Houston, Texas. Cplt., para. 10.

7. The amount in controversy in this derivative action easily exceeds $75,000. Plaintiffs claim that the damages of members of the "class" exceed $50,000 but are less than $75,000 per person (see Affidavit of Stephen M. Tillery, attached to Cplt.). This is erroneous. The T. Rowe Price International Stock Fund has over 490,000 shareholder accounts and over $4.8 billion in assets. The AIM European Growth Fund has over 60,000 shareholder accounts and over $425 million in assets. If plaintiffs' allegations are upheld, and the Funds have been mispriced, damages to the Funds would be far in excess of $75,000, especially since plaintiffs seek to recover damages for five years of alleged mispricing of the Funds. Cplt., para. 46.[2]

8. Accordingly, this action is removable pursuant to 28 U.S.C. §§ 1441 and 1446.

9. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on the Clerk of the Circuit Court of Madison County in the State of Illinois and on Plaintiffs' Counsel.

10. The two defendants not represented by the undersigned counsel, Artisan Funds, Inc. and Artisan Partners Limited Partnership, have advised us that they will be

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[2] The assertion that damages are less than $75,000 appears to be made by Plaintiffs for the purpose of keeping this litigation in Madison County, rather than in the federal court where it belongs.

submitting separate papers of their own in support of removal.

Wherefore, defendants T. Rowe Price International Funds, Inc., T. Rowe Price International, Inc., AIM International Funds, Inc. and A I M Advisors, Inc. pray that this action be removed to the United States District Court for the Southern District of Illinois.

Dated: October 16, 2003

[attorney name and address blocks omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 03-CV-0673-DRH

T.K. PARTHASARATHY, EDMUND WOODBURY, STUART ALLEN SMITH, AND SHARON SMITH, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

T. ROWE PRICE INTERNATIONAL FUNDS, INC., A CORPORATION, T. ROWE PRICE INTERNATIONAL, INC., ARTISAN FUNDS, INC., A CORPORATION, ARTISAN PARTNERS LIMITED PARTNERSHIP, AIM INTERNATIONAL FUNDS, INC., A CORPORATION, AND AIM ADVISORS, INC.,

Defendants.

[Filed Oct. 23, 2003]

CONSENT TO REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, defendants Artisan Funds, Inc. and Artisan Partners Limited Partnership (sometimes referred to collectively as the "Artisan Defendants") hereby consent to the removal of the above-captioned action from the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, to the United States District Court for the Southern District of Illinois, and in support of such removal state as follows:

1. Defendant Artisan Funds, Inc. is a corporation organized under the laws of the State of Wisconsin with its principal place of business in Milwaukee, Wisconsin.

2. Defendant Artisan Partners Limited Partnership is a limited partnership organized under the laws of the

State of Delaware with its principal place of business in Milwaukee, Wisconsin. The general and limited partners of Artisan Partners Limited Partnership are individuals, trusts, partnerships, limited liability companies and corporations, each of which (or, in the case of such trusts, partnerships and limited liability companies, their respective trustees, partners and/or members) are citizens of the States or foreign states set forth in Exhibit A hereto. As appears from Exhibit A, none of such general and limited partners of Artisan Partners Limited Partnership are citizens of the State of Illinois.

3. The Amended Complaint alleges that plaintiff T.K. Parthasarathy is a shareholder of Artisan International Fund, a series of Artisan Funds, Inc. (Am. Compl. ¶ 11.) As of the date of the filing of this action, there were more than 200,000 beneficial owners of shares in Artisan International Fund, over 500 million shares outstanding, and over $9 billion in Fund assets.

4. The earliest date on which either of the Artisan Defendants was served with Summons or Complaint in this action was September 23, 2003, when Summons and Complaint were first served on defendant Artisan Partners Limited Partnership. Defendant Artisan Funds, Inc. purportedly was served with Summons and Complaint on September 24, 2003. Copies of the Summons directed to the Artisan Defendants are attached hereto as Exhibits B and C.

5. On October 16, 2003, defendants T. Rowe Price International Funds, Inc., T. Rowe Price International, Inc., AIM International Funds, Inc. and AIM Advisors, Inc. filed a Notice of Removal removing this action from the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, to this Court (the "Notice of Removal"). Copies of plaintiffs' Complaint, a Motion for Leave to Amend filed by plaintiffs on or about October 3, 2003, an Order of the Circuit Court of the Third Judicial Circuit dated October 3, 2003 granting plaintiffs' motion, and

plaintiffs' First Amended Complaint, are attached as exhibits to the Notice of Removal.

6. The foregoing Summons and the referenced exhibits to the Notice of Removal constitute all process, pleadings and orders served upon or received by the Artisan Defendants while this action was pending in the Circuit Court of the Third Judicial Circuit.

7. As set forth in the Notice of Removal, this action is removable to this Court pursuant both to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1441(b):

a) This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. § 1332. Plaintiffs and defendants are (and were at the time of filing) citizens of different states, and the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs. The claims asserted in the Complaint and Amended Complaint are derivative in nature, not direct claims, and, as such, the amount in controversy as to each defendant exceeds $75,000, exclusive of interest and costs.

b) If and to the extent any portion of the claims asserted by plaintiffs could be deemed to be direct claims, they are removable to this Court under the Securities Litigation Uniform Standards Act of 1998, 15 U.S.C. §§ 77p, 78bb(f) ("SLUSA"). *See also* Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa (vesting exclusive jurisdiction in federal courts over actions brought for violations of the Securities Exchange Act of 1934 or of rules and regulations thereunder). Such claims present (if anything) a federal question as to which this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

c) Independent of the existence of diversity jurisdiction and jurisdiction under SLUSA, the Court has jurisdiction over this action in its entirety under 28 U.S.C. § 1331 in that plaintiffs' action is founded on and rooted in preeminent federal law, specifically,

the Investment Company Act of 1940, 15 U.S.C. § 80a-1, *et seq.*, and the rules and regulations promulgated thereunder by the Securities and Exchange Commission (the "SEC"). Pursuant to Section 44 of the Investment Company Act of 1940, 15 U.S.C. § 80a-43, the Court possesses jurisdiction over "all suits in equity and actions at law brought to enforce any liability or duty" created by the Act or by "the rules, regulations, or orders" issued by the SEC thereunder.

d) Because the Court has original jurisdiction in this action, it can and should exercise supplemental jurisdiction as to any direct claims that may exist under state law pursuant to 28 U.S.C. § 1367 and 28 U.S.C. § 1441(c).

8. Wherefore, defendants Artisan Funds, Inc. and Artisan Partners Limited Partnership hereby consent to the Notice of Removal and to the removal of this action from the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, to the United States District Court for the Southern District of Illinois.

Dated: October 23, 2003

[attorney name and address blocks omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 03-CV-691-DRH

CARL KIRCHER AND ROBERT BROCKWAY,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,
Plaintiffs,

v.

PUTNAM FUNDS TRUST, A BUSINESS TRUST,
PUTNAM INVESTMENT MANAGEMENT, LLC,
EVERGREEN INTERNATIONAL TRUST, A BUSINESS TRUST, AND
EVERGREEN INVESTMENT MANAGEMENT COMPANY, LLC,
Defendants.

[Filed Oct. 23, 2003]

NOTICE OF REMOVAL

To: All Counsel on the Attached Service List

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441 and 1446 and the applicable provisions of the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), defendants Putnam Funds Trust and Putnam Investment Management, LLC (collectively, "Putnam") and defendants Evergreen International Trust and Evergreen Investment Management Company, LLC (collectively, "Evergreen") hereby remove the above-captioned action from the Circuit Court of Madison County, Illinois to the United States District Court for the Southern District of Illinois.[1] This action is removable under SLUSA

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[1] There is no legal or contractual relationship between the Putnam defendants and the Evergreen defendants, nor any apparent reason

because it is a "covered class action" alleging fraud in connection with the purchase or sale of "covered securities," as those terms are defined by SLUSA. The action also is removable on the ground that it presents a "substantial federal question" in that any duties defendants had with respect to the pricing of shares of their mutual funds arose exclusively under the federal securities laws, and plaintiffs have available remedies under the federal securities laws.

Background of the Action and Plaintiffs' Allegations

1. On September 16, 2003, plaintiffs commenced the above-captioned action in the Circuit Court of Madison County, Illinois.

2. Defendants Evergreen International Trust and Evergreen Investment Management Company, LLC were served with copies of the Summons and Complaint on September 24, 2003. Defendants Putnam Funds Trust and Putnam Investment Management, LLC were served with copies of the Summons and Complaint on September 29, 2003. A copy of all process, pleadings and orders served upon defendants in the state court action are attached hereto as Exhibit A. All defendants consent to removal and this Notice of Removal has been filed within thirty days of service of the Summons and Complaint on the first-served defendant.

3. The Complaint concerns the manner in which Putnam and Evergreen allegedly determined the prices at which shares of respectively, the Putnam International Growth & Income Fund and the Evergreen International Growth Fund (collectively, the "Funds") would be sold to the investing public. Specifically, plaintiffs allege that:

(a) the Funds are open-end mutual funds whose shares are sold to investors at prices based upon the net asset value ("NAV") per share plus applicable sales charges. (Compl. ¶ 13);

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why the claims against these separate groups of defendants have been brought in one action.

(b) investors may redeem their shares at the NAV of the shares less any redemption charges. (Compl. ¶ 13);

(c) defendants recalculate the NAV of the Funds' shares once each business day at the close of trading on the New York Stock Exchange (the "NYSE") at 4:00 p.m. Eastern Time and report the NAVs to the National Association of Securities Dealers (the "NASD") for dissemination to the public. (Compl. ¶ 15);

(d) securities issued by non-U.S. companies are a significant portion of each Fund's portfolio. (Compl. ¶ 16);

(e) the foreign exchanges on which the Fund's non-U.S. securities are traded close from five to fifteen hours ahead of Eastern Standard Time. (Compl. ¶ 16);

(f) there is a positive correlation between price movements in the U.S. market and those in the foreign markets such that it is possible to predict the next-day movement of prices in the foreign markets based on the performance of the U.S. market. (Compl. ¶ 17);

(g) despite the fact that the prices of the foreign securities held by the Funds are "stale' as of 4:00 p.m. Eastern Time, when the Funds calculate their NAVs, and despite the correlation between price movements in the U.S. market and future price movements in the foreign markets, the Funds use the last trade price in the home market for each of their foreign securities when calculating daily NAVs. (Compl. ¶ 16, 17, 20).[2]

4. Plaintiffs contend that defendants' alleged pricing practices for non-U.S. securities "have exposed long term shareholders to market timing traders who regularly purchase and redeem Defendant's shares as part of a profit-

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[2] Defendants do not concede the truth of plaintiffs' allegations regarding their policies or practices in pricing foreign securities for purposes of determining the Funds' daily NAVs.

able trading strategy." (Compl. ¶ 33). According to plaintiffs,

(a) "market timers who buy Defendants' shares on days when the United States market moves up are buying discounted shares at the expense of other fund shareholders because the funds' underlying foreign securities are undervalued as of the time of the share purchase." (Compl. ¶ 34); and

(b) "market timers who sell (redeem) Defendants' shares on days when the United States market moves down are selling (redeeming) shares at a premium at the expense of other fund shareholders because the underlying foreign securities are overvalued as of the time of the sale (redemption). (Compl. ¶ 35).

5. Plaintiffs claim the activities of the market timers result in dilution of the value of their shares and a transfer of wealth from the long-term buy-and-hold shareholders to the market timers. (Compl. ¶¶ 37, 38.).

6. Based on these allegations, plaintiffs assert two separate counts against each defendant:

(a) In Counts I and III of the Complaint, plaintiffs contend that Putnam and Evergreen, respectively, knew or were negligent in not knowing that the closing prices for the foreign securities used to calculate daily NAVs did not reflect their "fair value" (Compl. ¶ 56, 68) and that defendants breached their fiduciary duties to plaintiffs by:

(i) "failing to properly evaluate on a daily basis whether a significant event affecting the value of [the respective Fund's] portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices" (Compl. ¶¶ 56(i), 68(i));

(ii) "failing to implement [the respective Fund's] portfolio valuation and share pricing policies and procedures" (Compl. ¶¶ 56(ii), 68(ii)); and

(iii) "allowing portfolio valuation and share pricing policies and procedures which benefitted market timing traders of [the respective Fund's] shares at the expense of long term shareholders. (Compl. ¶¶ 56(iii), 68(iii)).

(b) In Counts II and IV of the Complaint, plaintiffs contend that Putnam and Evergreen, respectively, acted "with utter indifference and conscious disregard" for plaintiffs' investments and "willfully and wantonly" breached their duties to plaintiffs (Compl. ¶¶ 60, 73) by:

(i) "failing to know and implement applicable rules and regulations concerning the calculation of NAV" (Compl. ¶¶ 60(i), 73(i));

(ii) "failing to properly evaluate on a daily basis whether a significant event affecting the value of [the respective Fund's] portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices" (Compl. ¶¶ 60(ii), 73(ii));

(iii) "failing to implement [the respective Fund's] portfolio valuation and share pricing policies and procedures" (Compl. ¶¶ 60(iii), 73(iii)); and

(iv) "allowing portfolio valuation and share pricing policies and procedures which benefitted market timing traders of [the respective Fund's] shares at the expense of long term shareholders. (Compl. ¶¶ 60(iv), 73(iv)).

7. Plaintiffs purport to bring this action on behalf of themselves and a putative class consisting of "all persons in the United States who have owned shares in Putnam International Growth and Income [Fund] or Evergreen International Growth [Fund] for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ('long term shareholders')." (Compl. ¶ 41). Plaintiff asserts that the class period begins five years before the date of filing of the Complaint and continues through the date on which the Complaint was filed. (*Id.*)

Grounds for Removal Under SLUSA

8. In 1998 Congress enacted SLUSA, Pub. L. No 105-353, to prevent securities class action plaintiffs from evading the heightened pleading standards of the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), and the PSLRA's mandatory stay of discovery pending resolution of a motion to dismiss, by filing securities class actions in state courts. *Lander v. Hartford Life & Annuity Ins. Co.*, 251 F.3d 101, 107-08 (2d Cir. 2001). SLUSA amended the Securities Act of 1933 (the "1933 Act") and the Securities Exchange Act of 1934 (the "1934 Act"). Those amendments are codified at 15 U.S.C. § 77p(b) and (c) and 15 U.S.C. § 78bb(f)(1) and (2), respectively.[3]

9. SLUSA's amendments to the 1934 Act provide, in pertinent part:

> (1) Class action limitations
>
> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal Court by any private party alleging –
>
> (A) a misrepresentation or omission of material fact in connection with the purchase or sale of a covered security; or
>
> (B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.
>
> (2) Removal of covered class actions
>
> Any covered class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

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[3] Citations herein are to the applicable provisions of the 1934 Act, as amended by the SLUSA.

15 U.S.C. § 78bb(f).

10. SLUSA thus makes federal courts the exclusive venue for "covered class actions" alleging fraud in connection with the purchase or sale of "covered securities" and mandates that such class actions be governed exclusively by federal law. *Lander*, 251 F.2d at 108; *see also* H.R. CONF. REP. NO. 105-803, at 13 (1998) (stating that SLUSA "establishes uniform rules for securities class action litigation involving our national capital markets" and that "class actions relating to a 'covered security' . . . alleging fraud or manipulation must be maintained pursuant to the provisions of Federal securities law, in Federal court").

11. Despite plaintiffs' attempt to avoid removal under SLUSA by couching their Complaint as a state-law breach of fiduciary duty suit on behalf of "owners" of shares of the Funds, a careful examination of plaintiffs' allegations shows that this case falls squarely within the contours of SLUSA.

12. **Covered Class Action.** An action is a "covered class action" for purposes of SLUSA if it involves common questions of law or fact that predominate over any individual questions and is brought (i) on behalf of more than 50 persons or prospective class members or (ii) on a representative basis by one or more parties suing on behalf of themselves and other unnamed parties similarly situated. 15 U.S.C. § 78bb(f)(5)(B). This action is a "covered class action" within the meaning of SLUSA because the two named plaintiffs purport to bring this action on behalf of themselves and all others similarly situated (Compl. p. 1) and allege that "[c]ommon questions of law or fact predominate over any questions affecting only individual members of the Class." (Compl. ¶ 13).

13. **Covered Securities.** A "covered security" for purposes of SLUSA is one that meets the definition of a "covered security" provided in § 18(b) of the 1933 Act, 15 U.S.C. § 77r(b), at the time the misrepresentation, omission, manipulative act or deceptive conduct is alleged to

have occurred. 15 U.S.C. § 78bb(f)(5)(E). The 1933 Act's definition of "covered securities" includes "a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940." 15 U.S.C. § 77r(b)(2). The shares of both the Putnam International Growth and Income Fund and the Evergreen International Growth Fund are "covered securities" within the meaning of SLUSA because the shares are issued by investment companies registered under the Investment Company Act of 1940.

(a) As set forth in note 1 to the financial statements in the Putnam International Growth and Income Fund's Annual Report for its fiscal year ended June 30, 2003 (available at Putnam's Website at www.putnam.com): "Putnam International Growth and Income Fund ("the fund") is a series of Putnam Funds Trust ("the trust") which is registered under the Investment Company Act of 1940, as amended, as a diversified, open-end management investment company."

(b) As set forth in note 1 to the financial statements in the Evergreen International Growth Fund's Annual Report for its fiscal year ended October 21, 2002 (available at Evergreen's Website at www.evergreeninvestments.com): "Evergreen International Growth Fund (the "Fund") is a diversified series of Evergreen International Trust (the "Trust"), a Delaware business trust organized on September 18, 1997. The Trust is an open-end management investment company registered under the Investment Company Act of 1940, as amended (the "Act").

14. **Alleged Misrepresentations and Omissions of Material Fact.** Plaintiffs allege that defendants "promoted, marketed, and sold shares [of their respective Funds] to the investing public nationwide." (Compl. ¶¶ 3, 5). Plaintiffs claim that defendants marketed the Funds as having "*the stated goal* of providing long term capital growth to investors who hold shares of the [Funds]." (Compl. ¶¶ 50, 63, emphasis added). Plaintiffs, in essence, contend that this "stated goal" was false because,

according to plaintiffs, defendants' practices in calculating the daily NAVs of the Funds' shares "have exposed long term shareholders to market timing traders" (Compl. ¶ 33) and have resulted in a "transfer of wealth from the non-trading long term buy and hold shareholders to the market timing traders ... through dilution." (Compl. ¶ 37).

15. Plaintiffs further allege that defendants publicly reported the allegedly "artificially inflated" or "artificially deflated" NAVs to the Funds' shareholders and the investing public by reporting the calculated NAVs each day to the NASD for dissemination to the public (Compl. ¶ 15), and through defendants' interactive Websites, which defendants allegedly use to communicate with shareholders regarding the performance of the Funds and the Funds' investments. (Compl. ¶¶ 4, 6).

16. By contending that defendants misrepresented that the Funds were appropriate for long-term buy-and-hold investors and misrepresented the NAVs of the Funds' shares plaintiffs have alleged that defendants misrepresented and omitted material facts concerning plaintiffs' investments and the value of the Funds' shares.

17. **Alleged Manipulative Device or Contrivance.** Even if plaintiffs had not alleged any misrepresentations or omissions of material fact, SLUSA does not apply *only* where there are alleged misrepresentations or omissions of material facts. Rather, SLUSA *also* applies to class actions alleging that "the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(B).[4]

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[4] The language of SLUSA tracks the language of § 10(b) of the 1934 Act, 15 U.S.C. § 78j(b), which makes it unlawful for any person, in connection with the purchase or sale of a security, to use or employ "any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." Securities and Exchange Commission ("SEC") Rule 10b-5, 17

18. The essence of plaintiffs' Complaint is that the defendants engaged in *manipulation* of the Funds' share prices in that they allegedly caused the share prices to be artificially inflated or deflated at various times by not adjusting the NAVs, which they allegedly determined by using the last trade prices on the foreign markets, for "significant events" occurring subsequent to the close of those markets and prior to 4:00 p.m. Eastern Time. (Compl. ¶¶ 56(i), 60(ii), 68(i), 73(ii)). The United States Supreme Court's decision in *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462 (1977), leaves no doubt that defendants' alleged actions constitute "manipulation" within the meaning of § 10(b) of the 1934 Act. In *Santa Fe* the Supreme Court explained:

> Manipulation is "virtually a term of art when used in connection with securities markets." . . . The term refers generally to practices, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity.

Id. at 476 (emphasis added, citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976) and 15 U.S.C. § 78i).

19. Thus, the fact that plaintiffs have styled their Complaint as one for alleged breach of fiduciary duties, rather than as a misrepresentation or omission action, does not take this case outside the ambit of the federal securities laws and the removal provisions of SLUSA governing securities class actions. *See, e.g., Denton v. H&R Block Fin. Advisors, Inc.*, 2001 U.S. Dist. LEXIS 15831, at *10 (N.D. Ill. Oct. 3, 2001) ("While it is true that allega-

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C.F.R. § 240. Rule 10b-5, promulgated under § 10(b) of the 1934 Act, makes it unlawful for any person, in connection with the purchase or sale of a security "(a) to employ any device, scheme or artifice to defraud, (b) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person."

tions of breach of fiduciary duty alone will not sufficiently plead a securities fraud claim, a breach of fiduciary duty may give rise to a Rule 10b-5 claim where the alleged conduct 'can fairly be viewed as manipulative or deceptive within the meaning of the [Securities Act].'") (Kocoras, Chief Judge) (citing *Santa Fe*, holding that alleged claim for breach of fiduciary duty was preempted by SLUSA and properly removed to federal court, and dismissing the action).[5]

20. **In Connection With the Purchase of Sale of a Security.** SLUSA only preempts claims alleging misrepresentations or omissions of material facts or manipulative or deceptive devices or contrivances that occur "in connection with the purchase or sale" of covered securities. 15 U.S.C. § 88bb(f)(1)(A) and (B) (emphasis added).

21. In an effort to plead around SLUSA's "purchase or sale" requirement, plaintiffs define the proposed class to include "all persons in the United States who *have owned* shares in Putnam International Growth and Income [Fund] or Evergreen International Growth [Fund] for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ('long term shareholders')." (Compl. ¶ 41, emphasis added). Plaintiffs' attempt at artful pleading is unavailing. To avoid removal under SLUSA plaintiffs would have to define the class to include *only* those persons who held shares of the Funds at the beginning of the 5-year class period and continued to hold those shares as of the end of the 5-year class period. The class as defined, however, *also* includes (i) persons who held shares of the Funds at the beginning of the 5-year class period and continued to hold the shares for at least 14-days before selling them during the class period; (ii) persons who purchased shares during 5-year class period and continued to hold them throughout the entire class period and (iii) persons who purchased shares dur-

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[5] District court cases are cited herein by way of example of analysis in similar cases.

ing the class period and held them for at least 14-days before selling them during the class period.

22. SLUSA applies where the class as defined by plaintiffs *necessarily* includes purchasers and/or sellers of a covered security. *See, e.g., Riley v. Merrill Lynch, Pierce, Fenner & Smith*, 292 F.3d 1334, 1345 (11th Cir. 2002) ("[W]hen a claim that sweeps within its ambit actual purchases and sales of securities is covered by SLUSA, a plaintiff may not avoid SLUSA's restrictions simply by alleging that a given misrepresentation caused him both to purchase and hold a particular security."); *Professional Mgmt. Assocs., Inc. v. KPMG LLP*, 335 F.3d 800, 803 (8th Cir. 2003) (where a complaint implicitly alleges that misrepresentations and omissions were made in connection with the purchase of securities, the plaintiff "cannot avoid preemption by asserting it is only claiming damages suffered as a result of holding its stock"); *Hardy v. Merrill Lynch, Pierce, Fenner & Smith*, 189 F. Supp. 2d 14, 18 (S.D.N.Y. 2001) (finding claims preempted by SLUSA where the class definition necessarily included persons who purchased their shares after Merrill Lynch made allegedly misleading statements, even though class also included persons who already held shares at the time the alleged misstatements were made).

23. The misstatements and omissions of material fact and manipulative practices alleged by plaintiffs also meet SLUSA's requirement that they have been made or occurred "in connection with" the purchases and sales of a covered security. SLUSA does not define the phrase "in connection with"; however, the identical phrase is used in § 10(b) of the 1934 Act and courts construing SLUSA have looked to case law under the 1934 Act in interpreting this phrase. *See, e.g., Falkowski v. Imation Corp.*, 309 F.3d 1123, 1129 (9th Cir. 2002) (noting that because SLUSA employs language identical to the language of the 1933 and 1934 Acts, "it is logical to look to case law under the 1933 and 1934 Acts as a starting point for interpreting the phrase 'in connection with the purchase or sale'").

24. To satisfy the "in connection with" requirement for purposes of a § 10(b) claim, a plaintiff need only show that he suffered injury as a result of deceptive practices "touching" his purchase or sale of securities. *Superintendent of Ins. of New York v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12-13 (1971). The Supreme Court repeatedly has held that this requirement must be construed "'not technically and restrictively, but flexibly'" in order to promote § 10(b)'s remedial purpose. *See Affiliated Ute Citizens of Utah v. Unites* [*sic*] *States*, 406 U.S. 128, 151 (1972) (quoting *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 186 (1963)).

25. As plaintiffs allege, shares of open end mutual funds such as the Putnam International Growth and Income Fund and the Evergreen International Growth Fund are "*sold to investors such as Plaintiffs* at a price based upon the net asset value ('NAV') per share plus applicable sales charges" and redeemed (bought back by the Fund) "at the NAV of the shares less any redemption charges." (Compl. ¶ 13, emphasis added). Class members who bought shares of the Funds at times when the NAVs purportedly were "artificially inflated" as a result of defendants' alleged pricing practices, and class members who sold shares at times when the NAVs purportedly were "artificially deflated" as a result of defendants' alleged pricing practices, would have suffered monetary damages as a result as a result of alleged manipulative practices that "touched" their purchases and sales of shares of the Funds. Plaintiffs' allegations, therefore, meet the "in connection with" requirement of § 10(b) and SLUSA.

26. In sum, plaintiffs have alleged misrepresentations and omissions of material fact and/or fraudulent devices or contrivances by defendants in connection with the purchases and sales of class members who purchased and/or sold shares of the Funds during the alleged class period. Plaintiffs' claims fall squarely within the four comers of SLUSA and, therefore, are preempted – notwithstanding plaintiffs' attempt to artfully plead their securities class action claims as state-law claims. For these reasons, re-

moval under SLUSA is proper and any motion by plaintiffs to remand should be denied.[6]

Grounds for Removal on the Basis That the Complaint Presents a Substantial Federal Question

27. The artful pleading exception to the well-pleaded complaint rule applies not only where Congress has expressly preempted a field, but also where a plaintiff's complaint presents a "substantial federal question." *Lippitt v. Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1041 (9th Cir. 2003) (certain internal citations omitted).

28. Plaintiffs contend that defendants breached their duties to the class by "failing to know and implement applicable rules and regulations concerning the calculation of NAV." (Compl. ¶¶ 60(i), 73(i)). However, defendants' duties with respect to the pricing of the Funds' shares arose *exclusively* under federal law. Specifically, SEC Rule 2a-4(a)(1), 17 C.F.R.270.2a-4(a)(1), promulgated under § 2(a)(41) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(41), provides that "[p]ortfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company." Indeed, plaintiffs allude to Rule 2a-4(a)(1) in paragraphs 59 and 72 of their Complaint, wherein they allege that applicable regulations governing the pricing of the shares of the Funds were published on or about January 1, 1965.[7]

29. Furthermore, how registered investment companies should price the shares of foreign companies under SEC Rule 2a-4 presents a substantial, *disputed* question of federal law. Plaintiffs contend that these shares should

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[6] SLUSA would not prevent the two named plaintiffs from asserting their purported state law claims on an individual basis; rather, it only preempts their ability to assert these claims on a class basis.

[7] SEC Rule 2a-4 was published in the Federal Register on December 30, 1964. *See* 29 FR 19101.

be priced at "fair value" rather than at their last trading price as of the close of the foreign exchange. (Compl. ¶ 17). However, in a 2001 letter to the Investment Company Institute, the SEC noted that "funds generally calculate their NAVs by using the closing prices of portfolio securities on the exchange or market (whether foreign or domestic) on which the securities principally trade." 2001 SEC No-Act LEXIS 543, at *3-4 (Apr. 30, 2001). The SEC further noted that "the closing prices of foreign securities may not reflect their market values at a fund's NAV calculation if an event that will affect the value of those securities ("significant event") has occurred since the closing prices were established on the foreign exchange or market, but before the fund's NAV calculation." *Id.* The SEC, therefore, concluded that if a fund determines that a "significant event" has occurred since the closing of the foreign market but before calculation of the fund's NAV, the fund must value the foreign security pursuant to a fair value pricing methodology. *Id.* at *8. Notably, however, the SEC declined to define what constitutes a "significant event" requiring "fair value pricing" of foreign securities. *Id.* at *10-11.

30. The issue of what constitutes a "significant event" requiring "fair value pricing" of foreign shares held in a mutual fund's portfolio implicates important federal interests. Indeed, Congress repeatedly has indicated its intent that nationally marketed securities should be governed by *uniform standards*. *See, e.g., Patneaude v. Equitable Life Assurance Soc'y*, 290 F.3d 1020, 1026 (9th Cir. 2002) (explaining that the PSLRA, the National Securities Markets Improvements Act of 1996, and SLUSA, "demonstrate that Congress intended to provide national, uniform standards for securities markets and nationally marketed securities"). Accordingly, the issue of how mutual funds should price the shares of foreign securities under SEC Rule 2a-4 should be decided by the federal courts, not the various state courts. *Cf. D'Alessio v. NYSE, Inc.*, 258 F.3d 93 (2d Cir. 2001) (holding that claims "arose under" federal law where claims were predi-

cated on alleged breached of certain duties imposed on the NYSE by the 1934 Act and would require a court to interpret federal law governing securities trading on a national exchange); *see also, e.g., Sparta Surgical Corp. v. NASD, Inc.*, 159 F.3d 1209, 1212 (9th Cir. 1998) ("[A]lthough Sparta's theories are posited as state law claims, they are founded on the defendants' conduct in suspending trading and de-listing the offering, the propriety of which must be exclusively determined by federal law.") The Seventh Circuit, interpreting the Supreme Court's decision in *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804 (1986), has held that for a complaint to present a "substantial federal question" such that complete preemption may be found to exist, the plaintiff must have a private right of action under federal law. *See Seinfeld v. Austen*, 39 F.2d 761,764 (7th Cir. 1994) ("Under *Merrell Dow* . . . 'if federal law does not provide a private right of action, then a state law action based on its violation perforce does not raise a "substantial" federal question.'" (quoting *Utley v. Varian Assocs., Inc.*, 811 F.2d 1279, 1283 (9th Cir.), *cert. denied*, 484 U.S. 824 (1987)); *see also Rogers v. Tyson Foods, Inc.*, 308 F.3d 785, 788 (7th Cir. 2002) ("Most circuits share our view that the existence of a private right of action under federal law is an antecedent of complete preemption.").

31. There are ample federal remedies available to plaintiffs with respect to the alleged conduct and harm of which they complain in this action. Indeed, only yesterday a leading plaintiffs' securities class action firm, Milberg Weiss, filed a putative class action in the United States District Court for the Southern District of New York on behalf of shareholders of various Putnam mutual funds, including the Putnam International Growth and Income Fund, alleging violations by defendants of various provisions of the 1933 and 1934 Acts, as well as violation of § 206 of the Investment Advisors Act, in connection with the very same NAV pricing practices at issue in this action. A copy of that complaint, captioned *Sheila Schulman as Trustee for Marital Trust of the Beneficial SEP*

IRA Plan for Allen Schulman IRA Plan v. Putnam American Government Income Fund, et al., may be viewed at Milberg Weiss' Website at www.milberg.com.

32. To conclude, because plaintiffs' claims are predicated on alleged violations of federal law, because there are substantial disputed questions as to the interpretation of that law, and because plaintiffs have remedies available to them under federal law, the Court should find that removal is proper on the ground that this action presents a "substantial federal question," as well as on the ground that plaintiffs' state-law class action claims are preempted by SLUSA.

Dated: October 23, 2003

[attorney name and address blocks omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 03-CV-0693-DRH

ROBERT POTTER AND DOROTHY LUETTINGER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiffs,

v.

JANUS INVESTMENT FUND, A BUSINESS TRUST; JANUS CAPITAL MANAGEMENT, LLC; SCUDDER INTERNATIONAL FUND, INC., A CORPORATION; AND DEUTSCHE INVESTMENT MANAGEMENT AMERICAS, INC.,
Defendants.

[Filed Oct. 23, 2003]

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendants SCUDDER INTERNATIONAL FUND, INC. and DEUTSCHE INVESTMENT MANAGEMENT AMERICAS, INC., by their undersigned attorneys, hereby remove the above-entitled action, originally filed in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, to the United States District Court for the Southern District of Illinois, pursuant to 23 [*sic*] U.S.C. §§ 1441 and 1446 and the Securities Litigation Uniform Standards Act of 1998, 15 U.S.C. § 78bb ("SLUSA"). A copy of SLUSA, as codified at 15 U.S.C. § 78bb is attached hereto as Exhibit A. Defendants JANUS INVESTMENT FUND and JANUS CAPITAL MANAGEMENT, LLC expressly consent to this removal and will file with the Court a separate Notice joining in this removal.

I. PROCEEDINGS TO DATE

1. On September 16, 2003, Plaintiffs commenced an action against defendants entitled, ***Robert Potter and Dorothy Luettinger v. Janus Investment Fund, Janus Capital Management, LLC, Scudder International Fund, Inc. and Deutsche Investment Management Americas, Inc.***, Case No. 2003 L 001254, in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois. True and correct copies of all pleadings, papers and other matters filed in this action are attached as Exhibit B.

2. Plaintiffs purport to represent a class of investors who held shares in the Janus Investment Fund (the "Janus Fund") or the Scudder International Fund, Inc. (the "Scudder Fund") for a period of more than fourteen days before redeeming or exchanging them, between September 16, 1998 and September 16, 2003. Plaintiffs have asserted state common law causes of action against defendants, including negligent and willful breach of a duty of care allegedly owed to Plaintiffs.

3. The Janus Fund is a Delaware business trust registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, *et seq.* (the "1940 Act"). Janus Capital Management, LLC, a subsidiary of Janus Capital Group Inc., is the investment advisor for the Janus Fund.

4. The Scudder Fund is a Maryland corporation registered as an investment company under the 1940 Act. Deutsche Investment Management Americas, Inc. is the investment advisor for the Scudder Fund.

II. TIMELINESS

5. Plaintiffs served Deutsche Investment Management Americas, Inc. and the Scudder Fund on or after September 24, 2003. Plaintiffs served the Janus Fund and Janus Capital Management LLC on or after September 27, 2003. This Notice of Removal is filed within 30 days of September 24, 2003, in compliance with 28 U.S.C. § 1446(b). The thirty day removal period set forth in 28

U.S.C. § 1446(b) is measured from the date of service. *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354, 119 S. Ct. 1322, 1328 (1999). Nonetheless, defendants did not receive the complaint until September 24, 2003, at the earliest.

III. GROUNDS FOR REMOVAL

A. Federal Question Jurisdiction

6. The Court has subject matter jurisdiction over this action pursuant to SLUSA. Specifically, Section 16 of SLUSA amended Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. § 78bb) by adding, *inter alia*, subsection (f)(2), entitled, "Removal of Covered Class Actions." This new subsection provides, "[a]ny covered class action brought in any State Court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1)." 15 U.S.C. § 78bb(f)(2).

7. Paragraph 1, referred to in the foregoing removal provision, preempts certain State statutory and common law claims and also makes subject to removal a "covered class action based on the statutory or common law of any State or subdivision thereof . . . alleging –

(A) a misrepresentation or omission of material fact in connection with the purchase or sale of a covered security; or

(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security."

15 U.S.C. §§ 78bb(f)(1).

8. A "covered class action" is one in which "damages are sought on behalf of more than 50 persons or prospective class members," or where "one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated," and common questions of law and fact predomi-

nate over questions affecting individual persons or class members. 15 U.S.C. § 78bb(f)(5)(B)(I) & (II). Plaintiffs bring this action seeking damages (along with other relief) for themselves individually and on behalf of a putative class of "all others similarly situated." They allege that there are questions of law and fact common to the class, which questions predominate over any questions affecting only individual class members. (Complaint ¶ 44).[1] Therefore, this action is a covered class action.

9. Shares of the Scudder Fund and the Janus Fund are securities issued by investment companies that are registered under the 1940 Act. Thus, those securities are "covered securit[ies]," a term SLUSA borrows from Sections 18(b)(1) and (2) of the Securities Act of 1933. *See* 15 U.S.C. § 78bb(f)(5)(E); 15 U.S.C. § 77r(b)(2).

10. Plaintiffs' claims are "in connection with" the purchase or sale of a covered security because they are based upon statements and alleged manipulative conduct relating to the value and nature of securities sold or consideration received. *See Saxe v. E.F. Hutton & Co.*, 789 F.2d 105, 108 (2d Cir. 1986); *see also SEC v. Zandford*, 535 U.S. 813, 819 122 S. Ct. 1899, 1903-04 (2002) ("It is enough that the scheme to defraud and the sale of securities coincide").

11. Although Plaintiffs' claims are alleged as negligence and breach of duty claims, the essence of the claims alleged by Plaintiffs relate to Defendants' alleged misrepresentation or omissions concerning market timing and valuation or to alleged manipulative or deceptive devices or contrivances concerning market timing and valuation. "Artful pleading" in which plaintiffs "disguis[e] a federal claim as a claim arising under state law," cannot defeat removal pursuant to SLUSA – courts are required to "look behind the complaint" to ascertain the true nature of

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[1] Defendants do not concede that this action may be properly certified as a class action; they merely restate the allegations set forth in Plaintiffs' Complaint.

Plaintiffs' claims. *See Korsinsky v. Salomon Smith Barney Inc.*, No. 01 Civ. 6085 (SWK), 2002 WL 27775, at *2 (S.D.N.Y. Jan. 10, 2002) (denying motion to remand and granting motion to dismiss complaint pursuant to SLUSA). As a result, the SLUSA mandates that this action be removed to federal court. *See* 15 U.S.C. § 78bb(f)(1)(A) and (B).

12. The federal nature of Plaintiffs' claims is further highlighted by Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa, which provides exclusive federal jurisdiction for claims, like those here, that allege violation of duties arising in connection with the purchase or sale of the securities at issue. Section 27 underscores the fact that Plaintiffs' allegations, in substance, seek relief for a violation of federal law and are therefore removable to federal court. *See, e.g., Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 n.2 (1981) (removal is proper where "the real nature of the claim is federal, regardless of plaintiff's characterization.").

13. Plaintiffs' claims also give rise to a federal question and are thus removable because, in substance, they arise under the 1940 Act and the rules and regulations promulgated thereunder. 28 U.S.C. § 1331. Again, plaintiffs cannot avoid federal jurisdiction through artful pleading in which their federal claims are disguised as state law claims. *See Leu v. Norfolk & Western Ry. Co.*, 820 F.2d 825, 830-31 (7th Cir. 1987) (plaintiffs "cannot escape the exclusive governance of the [Railway Labor Act] by articulating their claims in terms of a state tort action"). Plaintiffs' claims are based upon the alleged improper calculation and valuation of the net asset value of the Janus Fund and the Scudder Fund. The requirement of "forward-pricing," that all sales and purchases of fund shares occur at the next current net asset value, is a requirement of Rule 22c-1 of the General Rules and Regulations under the 1940 Act (the "1940 Act Regulations"). The method for calculating current net asset value for purposes of such sales and purchases is also set forth and governed by the 1940 Act and the 1940 Act Regulations.

See, e.g., 15 U.S.C. § 80a-22(c); 17 C.F.R. §§ 270.2a-4, 270.22c-1, and 270.22c-2. In fact, Plaintiffs' Count II and Count IV, asserting that defendants disregarded "applicable published regulations expressly recogniz[ing] that changes in trading prices of securities in [the funds] might occur daily after the closing of the New York Stock Exchange," (Compl. ¶¶ 59, 72), allege in substance that defendants violated Rule 2a-4 promulgated under the 1940 Act, although the Complaint itself does not specifically identify the regulation at issue. Such claims, as well as Plaintiffs' other claims relating to the calculation of the net asset value of the funds, are in substance 1940 Act claims, despite Plaintiffs' failure to specifically so allege.

14. Section 44 of the 1940 Act provides for the concurrent jurisdiction of state and federal courts over claims brought pursuant to the 1940 Act. 15 U.S.C. § 80a-44. Where a statute authorizes suits in both state and federal court, the action may be removed to federal court. *Ullmo v. Gilmour Acad.*, 273 F.3d 671, 680 (6th Cir. 2001). Removal based upon the federal jurisdiction provided by the 1940 Act is thus proper. 28 U.S.C. § 1331.

B. Diversity Jurisdiction

15. In the alternative, the Court has subject matter jurisdiction over this action with respect to the claims brought by Dorothy Leuttinger against Scudder International Fund, Inc. and Deutsche Investment Management Americas, Inc. based upon the diversity of citizenship of the parties. 28 U.S.C. § 1332.[2] Section 1332 provides that district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds $75,000 and is between citizens of different states. 28 U.S.C. § 1332(a)(1).

16. The claims asserted by Ms. Leuttinger against Scudder International Fund, Inc. and Deutsche Investment Management Americas, Inc. are wholly unrelated to

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[2] Mr. Potter does not assert claims against Scudder International Fund, Inc. or Deutsche Investment Management Americas, Inc.

the claims brought by Robert Potter against the Janus Investment Fund and Janus Capital Management, LLC. Scudder International Fund and Deutsche Investment Management Americas, Inc. thus intend to promptly move to sever Ms. Leuttinger's claims against them from Mr. Potter's claims against the Janus Investment Fund and Janus Capital Management, LLC. *See Nelson v. AIM Advisors, Inc.*, No. 01-CV-0282-MJR, 2002 WL 442189, at *2 (S.D. Ill. Mar. 8, 2002) (severing class action claims against unrelated mutual funds and mutual fund investment advisors where claims for relief did not arise out of the same transaction and defendants did not have relationship with each other); *Jaffke v. Anderson*, 162 Ill. App. 3d 290, 295, 515 N.E.2d 345, 348 (1987) (causes of action against multiple defendants arising from separate and distinct series transactions or series of transactions were improperly joined and should have been severed). Accordingly, there exists an additional basis for federal jurisdiction over Ms. Leuttinger's claims against Scudder International Fund and Deutsche Investment Management Americas, Inc., based upon the diversity of citizenship between them. 28 U.S.C. § 1332.[3]

17. If the claims asserted in the Complaint are not considered to be federal claims relating to misrepresentations, omissions or manipulative conduct concerning market timing and valuation, then they necessarily must be considered as claims that the funds themselves were damaged by mismanagement and the resulting dilution caused by market timers and the conduct alleged in the Complaint, to the detriment of all shareholders and the funds.

18. Allegations that the Scudder Fund was damaged by the alleged conduct constitute claims belonging to the fund itself, not to individual shareholders, and can thus only be

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[3] Diversity of citizenship does not exist with respect to the claims brought by Mr. Potter against the Janus Investment Fund and Janus Capital Management, LLC because the Janus Investment Fund is a Delaware business trust and one of its trustees is a citizen of Illinois.

asserted derivatively, rather than in Plaintiffs' individual capacities. *See, e.g., Meyers v. Brinson Advisors, Inc.*, No. 02-CV-0222-DRH, slip op. at 5 (S.D. Ill. July 22, 2002) (denying motion to remand direct action for breach of fiduciary duty brought by mutual fund shareholders against mutual fund where action was properly considered to be derivative action and removal was proper); *Danielewicz v. Arnold*, 137 Md. App. 601, 616, 769 A.2d 274, 283 (2001) (action to recover for injury to corporation can only be brought derivatively even though injury may incidentally affect shareholder by diminishing or destroying value of stock).[4] The "characterization of [ ]claims as individual, rather than derivative, does not make them so," and the Court must consider "the nature of the wrong plaintiff alleges in the body of the complaint." *Cottle v. Standard Brands Paint Co.*, CIV. A. Nos. 9342, CIV. A. 9405, CIV. A. 9151, 1990 WL 34824, at *2 (Del. Ch. March 22, 1990).

19. Because Plaintiffs' claims are, in reality, derivative claims on behalf of the fund, the Scudder Fund is to be treated as a nominal defendant, not a plaintiff, for purposes of diversity jurisdiction analysis. *See Abrams v. Koether*, Case No. 90 C 3204, 1990 WL 84536, at *1 (N.D. Ill. June 11, 1990). Accordingly, complete diversity exists since Plaintiffs are citizens of Illinois while the Scudder Fund was incorporated in Maryland with its principal place of business in New York and Deutsche Investment Management Americas, Inc. was incorporated in Delaware with its principal place of business in New York.

20. The damages to be considered for purposes of the amount in controversy requirement are the alleged damages suffered by the fund as a whole, not simply the damages of the nominal plaintiffs. Although the putative plaintiff class representatives disclaim damages in excess

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[4] Maryland law applies because the Scudder Fund, on whose behalf the claims may be asserted, is a Maryland corporation. *Meyers v. Brinson Advisors, Inc.*, No. 02-CV-0222-DRH, slip op. at 4 (S.D. Ill. July 22, 2002).

of $75,000 per individual fund shareholder, they seek aggregate damages, which as set forth above may only be sought derivatively on behalf of the funds, far in excess of the jurisdictional amount. 28 U.S.C. § 1332(a). Moreover, the amount in controversy for purposes of a diversity jurisdiction analysis is based not upon the amount sought by a particular plaintiff but "the amount at stake to either party to the suit." *BEM I, LLC v. Anthropologie, Inc.*, 301 F.3d 548, 553 (7th Cir. 2002). The amount at stake to the fund exceeds the jurisdictional amount and thus satisfies the requirements of diversity jurisdiction. 28 U.S.C. § 1332(a).

V. VENUE

21. Venue is proper in this district and division under 28 U.S.C. § 1441(a) and 15 U.S.C. § 78bb(f)(2), "Removal of Covered Class Actions," added by SLUSA, because the removed action has been pending in this district. Defendants reserve the right to seek the transfer of this matter to another district.

VI. NOTICE

22. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, in which the action has been pending and will serve such notice upon all adverse parties.

Dated: October 23, 2003

[attorney name and address blocks omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 03-CV-0693-DRH

ROBERT POTTER AND DOROTHY LUETTINGER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiffs.

v.

JANUS INVESTMENT FUND, A BUSINESS TRUST; JANUS CAPITAL MANAGEMENT, LLC; SCUDDER INTERNATIONAL FUND, INC., A CORPORATION; AND DEUTSCHE INVESTMENT MANAGEMENT AMERICAS, INC.,
Defendants.

[Filed Oct. 23, 2003]

JANUS CAPITAL'S NOTICE OF CONSENT TO AND JOINDER IN REMOVAL AND NOTICE OF FILING AFFIDAVIT OF CONSENT TO REMOVAL

Janus Capital Management, LLC ("Janus Capital"), by and through undersigned counsel, hereby files its Notice of Consent to and Joinder in Removal (hereinafter "Joinder Notice") and the accompanying Affidavit of Consent to Removal (hereinafter "Affidavit of Consent") executed by the counsel of record for Janus Investment Fund. In support thereof, Janus Capital states as follows:

1. Janus Capital hereby consents to the Notice of Removal filed in the above captioned action on this day, the 23rd of October, 2003, by defendants Scudder International Fund, Inc. ("Scudder") and Deutsche Investment Management Americas, Inc. ("Deutsche Investment") (hereinafter "Notice of Removal"). A true and correct copy

of the Notice of Removal with its exhibits are attached herewith as Exhibit A.

2. Janus Capital furthermore expressly consents to and joins in Paragraphs 1-14 and 21-22 of the Notice of Removal, which paragraphs are incorporated herein by reference.

3. Janus Capital furthermore files herewith a sworn Affidavit of Consent to Removal, executed on this day, the 23rd of October, 2003, by Dale R. Harris, counsel of record for Janus Investment Fund in the above-captioned action. The Affidavit of Consent is attached as Exhibit B.

Dated: October 23, 2003

[attorney name and address blocks omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 03-CV-843-DRH

GARY VOGELER, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiff,

v.

COLUMBIA ACORN TRUST AND
COLUMBIA WANGER ASSET MANAGEMENT, LP,
Defendants.

[Filed Dec. 12, 2003]

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446(a), defendants Columbia Acorn Trust and Columbia Wanger Asset Management, LP (collectively the "Columbia Defendants"), hereby give notice of their removal of Vogeler v. Columbia Acorn Trust and Columbia Wanger Asset Management, LP, No. 03 L 1550, from the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, to the United States District Court for the Southern District of Illinois, and in support of such removal state as follows:

BACKGROUND

1. The Complaint in this action was filed on November 13, 2003 in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois. A Summons was issued for each defendant on November 14, 2003.

2. The Columbia Defendants were served with the Summons and Complaint in Chicago, Illinois on November 21, 2003. Copies of the Summons and Complaint are attached as Group Exhibit A.

3. The foregoing Summons and Complaint constitute all process, pleadings and orders served upon or received by the Columbia Defendants while this action was pending in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois.

BASES FOR REMOVAL

4. This action is removable to this Court pursuant to both 28 U.S.C. § 1441(a) and 28 U.S.C. § 1441(b) on each of the following grounds:

(a) This Court has original jurisdiction over this action in its entirety under 28 U.S.C. § 1331 in that plaintiff's action is founded on and rooted in preeminent federal law, specifically, the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., (the "1940 Act"), and the Regulations promulgated by the Securities and Exchange Commission (the "SEC") under the 1940 Act, which define the duties of investment advisors of registered investment companies and which exclusively govern the calculation of the Net Asset Value ("NAV") of mutual fund shares. Specifically, the requirement that all purchases and redemptions of mutual fund shares occur at the next current NAV is imposed by Rule 22c-1 of the Code of Federal Regulations under the 1940 Act. *See, e.g.*, 15 U.S.C., § 80a-22(c); 17 C.F.R. §§ 270.2a-4, 270.22c-1 and 270.22c-2. Moreover, the Complaint in this case itself acknowledges and incorporates federal law governing the calculation of NAV in that it relies upon "applicable published regulations" effective "[o]n or about January 11, 1965" – an implicit reference to SEC Rule 2a-4 under the 1940 Act, which was promulgated on December 30, 1964. (See Compl., ¶ 52). Pursuant to Section 44 of the 1940 Act, 15 U.S.C. § 80a-43, the Court possesses jurisdiction over "all suits in equity and actions at law brought to enforce any liability or duty" created by the 1940 Act or by "the rules, regulations, or orders" issued by the SEC thereunder.

(b) Further, if and to the extent any portion of the claims asserted by plaintiff are individual (and not derivative) in nature, they would be claims in connection with the purchase or sale of securities, and therefore are removable to this Court under the Securities Litigation Uniform Standards Act of 1998, 15 U.S.C. §§ 77p, 78bb(f) ("SLUSA"). *See also* Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa (vesting exclusive jurisdiction in federal courts over actions brought for violations of the Securities Exchange Act of 1934 or of rules and regulations thereunder). Plaintiff's claims are predicated upon the NAV of mutual fund shares "sold to investors such as Plaintiff." (Compl., ¶ 9) Such claims present (if anything) a federal question as to which this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

(c) Because the Court has original jurisdiction in this action, it can and should exercise supplemental jurisdiction as to any direct claims that may exist under state law pursuant to 28 U.S.C. § 1367 and 28 U.S.C. § 1441(c).

VENUE

5. Venue is proper in this Court because the Southern District is the district embracing the place where the state court action is pending.

TIMELINESS OF REMOVAL

6. The Columbia Defendants file this notice within thirty days of receipt of a copy of the Complaint, plaintiff's initial pleading.

7. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on the Clerk of the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, and on plaintiff's counsel.

8. Both defendants hereby consent to the removal of this action to this Court.

9. The Columbia Defendants reserve the right to amend or supplement this Notice of Removal.

CONCLUSION

Removal to this Court is, therefore, proper because this Court has original jurisdiction over this action.

Dated: December 12, 2003.

[attorney name and address blocks omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 03-CV-852-GPM

STEVE AND BETH DUDLEY,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,
Plaintiffs,

v.

PUTNAM INTERNATIONAL EQUITY FUND AND
PUTNAM INVESTMENT MANAGEMENT, LLC,
Defendants.

[Filed Dec. 15, 2003]

NOTICE OF REMOVAL

To: All Counsel on the Attached Service List

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441 and 1446 and the applicable provisions of the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), defendants Putnam International Equity Fund and Putnam Investment Management, LLC (collectively, "Putnam") hereby remove the matter entitled *Steve and Beth Dudley, individually and on behalf of all others similarly situated, Plaintiffs, v. Putnam International Equity Fund and Putnam Investment Management, LLC, Defendants*, cause number 03-L-1539 (hereinafter referred to as "State Court Action") from the Circuit Court of Madison County, Illinois, to the United States District Court for the Southern District of Illinois. This action is removable under SLUSA because it is a "covered class action" alleging fraud in connection with the purchase or sale of "covered securities," as those terms are defined by SLUSA. The action also is removable on the ground that

it presents a "substantial federal question" in that any duties defendants had with respect to the pricing of shares of the Putnam International Equity Fund arose exclusively under the federal securities laws, and plaintiffs have available remedies under the federal securities laws.

Background of the Action and Plaintiffs' Allegations

1. On November 10, 2003, plaintiffs commenced the State Court Action in the Circuit Court of Madison County, Illinois.

2. Defendants Putnam International Equity Fund and Putnam Investment Management, LLC were served with copies of the Summons and Complaint in the State Court Action on November 19, 2003. A copy of all process, pleadings and orders from the State Court Action are attached hereto as Exhibit A. All defendants consent to removal and this Notice of Removal has been filed within thirty days of service of the Summons and Complaint on the first-served defendant.

3. The Complaint concerns the manner in which Putnam allegedly determined the prices at which shares of the Putnam International Equity Fund (the "Fund") would be sold to the investing public. Specifically, plaintiffs allege that:

(a) the Fund is an open-end mutual fund whose shares are sold to investors at prices based upon the net asset value ("NAV") per share plus applicable sales charges (Compl. ¶ 9);

(b) investors may redeem their shares at the NAV of the shares less any redemption charges (Compl. ¶ 9);

(c) defendants recalculate the NAV of the Fund's shares once each business day at the close of trading on the New York Stock Exchange (the "NYSE") at 4:00 p.m. Eastern Time and report the NAV to the National Association of Securities Dealers (the "NASD") for dissemination to the public (Compl. ¶ 11);

(d) securities issued by non-U.S. companies are a significant portion of the Fund's portfolio (Compl. ¶ 12);

(e) the foreign exchanges on which the Fund's non-U.S. securities are traded close from five to fifteen hours ahead of Eastern Standard Time (Compl. ¶ 12);

(f) there is a positive correlation between price movements in the U.S. market and those in the foreign markets such that it is possible to predict the next-day movement of prices in the foreign markets based on the performance of the U.S. market (Compl. ¶ 13);

(g) despite the fact that the prices of the foreign securities held by the Fund are "stale" as of 4:00 p.m. Eastern Time, when the Fund calculates its NAV, and despite the correlation between price movements in the U.S. market and future price movements in the foreign markets, the Fund uses the last trade price in the home market for each of its foreign securities when calculating the daily NAV. (Compl. ¶ 12,13, 16.)[1]

4. Plaintiffs contend that defendants' alleged pricing practices for non-U.S. securities "have exposed long term shareholders to market timing traders who regularly purchase and redeem Defendants' shares as part of a profitable trading strategy." (Compl. ¶ 29.) According to plaintiffs,

(a) "market timers who buy Defendants' fund shares on days when the United States market moves up are buying discounted shares at the expense of other fund shareholders because the funds [sic] underlying foreign securities are undervalued as of the time of the share purchase" (Compl. ¶ 30); and

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[1] Defendants do not concede the truth of plaintiffs' allegations regarding their policies or practices in pricing foreign securities for purposes of determining the Fund's daily NAV.

(b) "market timers who sell (redeem) Defendants' fund shares on days when the United States market moves down are selling (redeeming) shares at a premium at the expense of other fund shareholders because the underlying foreign securities are overvalued as of the time of the sale (redemption). (Compl. ¶ 31.)

5. Plaintiffs claim the activities of the market timers result in dilution of the value of their shares and a transfer of wealth from the long-term buy-and-hold shareholders to the market timers. (Compl. ¶¶ 33, 34.)

6. Based on these allegations, plaintiffs assert two separate counts against defendants:

(a) In Count I of the Complaint, plaintiffs contend that defendants breached their duty of care to plaintiffs by:

(i) "failing to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International Equity Fund's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices" (Compl. ¶ 49(a));

(ii) "failing to implement Putnam International Equity Fund's portfolio valuation and share pricing policies and procedures" (Compl. ¶ 49(b)); and

(iii) "allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Putnam International Equity Fund's shares at the expense of long term shareholders." (Compl. ¶ 49(c).)

(b) In Count II of the Complaint, plaintiffs contend that defendants acted "with utter indifference and conscious disregard" for plaintiffs' investments and "willfully and wantonly" breached their duties to plaintiffs (Compl. ¶ 54) by:

(i) "failing to know and implement applicable rules and regulations concerning the calculation of NAV" (Compl. ¶ 54(a));

(ii) "failing to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International Equity Fund's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices" (Compl. ¶ 54(b));

(iii) "failing to implement Putnam International Equity Fund's portfolio valuation and share pricing policies and procedures" (Compl. ¶ 54(c)); and

(iv) "allowing portfolio valuation and share pricing policies and procedures which benefited market timing traders of Putnam International Equity Fund's shares at the expense of long term shareholders." (Compl. ¶ 54(d).)

7. Plaintiffs purport to bring this action on behalf of themselves and a putative class consisting of "all persons in the United States who have held shares of Putnam International Equity Fund for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ('long term shareholders')." (Compl. ¶ 37.) Plaintiffs assert that the class period begins five years before the date of filing of the Complaint and continues through the date on which the Complaint was filed. (*Id.*)

Grounds for Removal Under SLUSA

8. In 1998 Congress enacted SLUSA, Pub. L. No 105-353, to prevent securities class action plaintiffs from evading the heightened pleading standards of the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), and the PSLRA's mandatory stay of discovery pending resolution of a motion to dismiss, by filing securities class actions in state courts. *Lander v. Hartford Life & Annuity Ins. Co.*, 251 F.3d 101, 107-08 (2d Cir. 2001). SLUSA amended the Securities Act of 1933 (the "1933 Act") and the Securities Exchange Act of 1934 (the "1934 Act").

Those amendments are codified at 15 U.S.C. § 77p(b) and (c) and 15 U.S.C. § 78bb(f)(1) and (2), respectively.[2]

9. SLUSA's amendments to the 1934 Act provide, in pertinent part:

> (1) Class action limitations
>
> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal Court by any private party alleging –
>
> (A) a misrepresentation or omission of material fact in connection with the purchase or sale of a covered security; or
>
> (B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.
>
> (2) Removal of covered class actions
>
> Any covered class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

15 U.S.C. § 78bb(f).

10. SLUSA thus makes federal courts the exclusive venue for "covered class actions" alleging fraud in connection with the purchase or sale of "covered securities" and mandates that such class actions be governed exclusively by federal law. *Lander*, 251 F.2d at 108; *see also* H.R. CONF. REP. NO. 105-803, at 13 (1998) (stating that SLUSA "establishes uniform rules for securities class action litigation involving our national capital markets" and that "class actions relating to a 'covered security' . . . alleging fraud or manipulation must be maintained pursuant to

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[2] Citations herein are to the applicable provisions of the 1934 Act, as amended by the SLUSA.

the provisions of Federal securities law, in Federal court").

11. Despite plaintiffs' attempt to avoid removal under SLUSA by couching their Complaint as a state-law breach of fiduciary duty suit on behalf of "holders" of shares of the Fund, a careful examination of plaintiffs' allegations shows that this case falls squarely within the contours of SLUSA.

12. **Covered Class Action.** An action is a "covered class action" for purposes of SLUSA if it involves common questions of law or fact that predominate over any individual questions and is brought (i) on behalf of more than 50 persons or prospective class members" or (ii) on a representative basis by one or more parties suing on behalf of themselves and other unnamed parties similarly situated. 15 U.S.C. § 78bb(f)(5)(B). This action is a "covered class action" within the meaning of SLUSA because the two named plaintiffs purport to bring this action on behalf of themselves and all others similarly situated (Compl. p.1) and allege that "[c]ommon questions of law or fact predominate over any questions affecting only individual members of the Class." (Compl. ¶ 40.)

13. **Covered Securities.** A "covered security" for purposes of SLUSA is one that meets the definition of a "covered security" provided in § 18(b) of the 1933 Act, 15 U.S.C. § 77r(b), at the time the misrepresentation, omission, manipulative act or deceptive conduct is alleged to have occurred. 15 U.S.C. § 78bb(f)(5)(E). The 1933 Act's definition of "covered securities" includes "a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940." 15 U.S.C. § 77r(b)(2). The shares of the Putnam International Equity Fund are "covered securities" within the meaning of SLUSA because the shares are issued by an investment company registered under the Investment Company Act of 1940. As set forth in note 1 to the financial statements in the Putnam International Equity Fund's Annual Report for its fiscal year

ended June 30, 2003 (available at Putnam's Website at www.putnam.com): "Putnam International Equity Fund (formerly known as Putnam International Growth Fund) ("the fund") is registered under the Investment Company Act of 1940, as amended, as a diversified, open-end management investment company."

14. **Alleged Misrepresentations and Omissions of Material Fact.** Plaintiffs allege that defendants "promoted, marketed, and sold shares of the Fund to the investing public nationwide." (Compl. ¶¶ 2.) Plaintiffs claim that defendants marketed the Funds as having "*the stated goal* of providing long term capital growth to investors who hold shares of the [Funds]." (Compl. ¶ 45 (emphasis added).) Plaintiffs, in essence, contend that this "stated goal" was false because, according to plaintiffs, defendants' practices in calculating the daily NAV of the Fund's shares "have exposed long term shareholders to market timing traders" (Compl. ¶ 29) and have resulted in a "transfer of wealth from the non-trading long term buy and hold shareholders to the market timing traders . . . through dilution." (Compl. ¶ 33.)

15. Plaintiffs further allege that defendants publicly reported the allegedly "artificially inflated" or "artificially deflated" daily NAV to the Fund's shareholders and the investing public by reporting the calculated NAV to the NASD for dissemination to the public (Compl. ¶ 11), and through defendants' interactive Website, which defendants allegedly use to communicate with shareholders regarding the performance of the Fund and the Fund's investments (Compl. ¶ 3.)

16. By contending that defendants' misrepresented that the Fund was appropriate for long-term buy-and-hold investors and misrepresented the daily NAV of the Fund's shares plaintiffs have alleged that defendants misrepresented and omitted material facts concerning their investments in, and the value of, the Fund's shares.

17. **Alleged Manipulative Device or Contrivance.** Even if plaintiffs had not alleged any misrepresentations

or omissions of material fact, SLUSA does not apply *only* where there are alleged misrepresentations or omissions of material facts. Rather, SLUSA *also* applies to class actions alleging that "the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(B).[3]

18. The essence of plaintiffs' Complaint is that defendants engaged in *manipulation* of the Fund's share prices in that they allegedly caused the share prices to be artificially inflated or deflated at various times by not adjusting the NAV, which they allegedly determined by using the last trade prices on the foreign markets, for "significant events" occurring subsequent to the close of those markets and prior to 4:00 p.m. Eastern Time. (Compl. ¶¶ 49(a), 54(b).) The United States Supreme Court's decision in *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462 (1977), leaves no doubt that defendants' alleged actions constitute "manipulation" within the meaning of Section 10(b) of the 1934 Act. In *Santa Fe* the Supreme Court explained:

> Manipulation is "virtually a term of art when used in connection with securities markets." . . . The term refers generally to practices, such as wash

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[3] The language of SLUSA tracks the language of Section 10(b) of the 1934 Act, 15 U.S.C. § 78j(b), which makes it unlawful for any person, in connection with the purchase or sale of a security, to use or employ "any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." Securities and Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated under Section 10(b) of the 1934 Act, makes it unlawful for any person, in connection with the purchase or sale of a security "(a) to employ any device, scheme or artifice to defraud, (b) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person."

> sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity.

Id. at 476 (emphasis added, citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976) and 15 U.S.C. § 78i).

19. Thus, the fact that plaintiffs have styled their Complaint as one for alleged breach of fiduciary duties, rather than as a misrepresentation or omission action, does not take this case outside the ambit of the federal securities laws and the removal provisions of SLUSA governing securities class actions. *See, e.g., Denton v. H&R Block Fin. Advisors, Inc.*, 2001 U.S. Dist. LEXIS 15831, at *10 (N.D. Ill. Oct. 3, 2001) ("While it is true that allegations of breach of fiduciary duty alone will not sufficiently plead a securities fraud claim, a breach of fiduciary duty may give rise to a Rule 10b-5 claim where the alleged conduct 'can fairly be viewed as manipulative or deceptive within the meaning of the [Securities Act].") (Kocoras, Chief Judge.) (citing *Santa Fe*, holding that alleged claim for breach of fiduciary duty was preempted by SLUSA and properly removed to federal court, and dismissing the action).[4]

20. **In Connection With the Purchase of Sale of a Security.** SLUSA only preempts claims alleging misrepresentations or omissions of material facts or manipulative or deceptive devices or contrivances that occur "in connection with the purchase or sale" of covered securities. 15 U.S.C. § 88bb(f)(1)(A) and (B) (emphasis added).

21. In an effort to plead around SLUSA's "purchase or sale" requirement, plaintiffs define the proposed class to include "all persons in the United States who have held shares in Putnam International Equity Fund for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ('long term shareholders')." (Compl. ¶ 37 (emphasis added).) Plaintiffs' at-

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[4] District court cases are cited herein by way of example of analysis in similar cases.

tempt at artful pleading is unavailing. To avoid removal under SLUSA plaintiffs would have to define the class to include *only* those persons who held shares of the Fund at the beginning of the 5-year class period and continued to hold those shares as of the end of the 5-year class period. The class as defined, however, *also* includes (i) persons who held shares of the Fund at the beginning of the 5-year class period and continued to hold the shares for at least 14-days before selling them during the class period; (ii) persons who purchased shares during the 5-year class period and continued to hold them throughout the entire class period and (iii) persons who purchased shares during the class period and held them for at least 14-days before selling them during the class period.

22. SLUSA applies where the class as defined by plaintiffs *necessarily* includes purchasers and/or sellers of a covered security. *See, e.g., Riley v. Merrill Lynch, Pierce, Fenner & Smith*, 292 F.3d 1334, 1345 (11th Cir. 2002) ("[W]hen a claim that sweeps within its ambit actual purchases and sales of securities is covered by SLUSA, a plaintiff may not avoid SLUSA's restrictions simply by alleging that a given misrepresentation caused him both to purchase and hold a particular security."); *Professional Mgmt. Assocs., Inc. v. KPMG LLP*, 335 F.3d 800, 803 (8th Cir. 2003) (where a complaint implicitly alleges that misrepresentations and omissions were made in connection with the purchase of securities, the plaintiff "cannot avoid preemption by asserting it is only claiming damages suffered as a result of holding its stock"); *Hardy v. Merrill Lynch, Pierce, Fenner & Smith*, 189 F. Supp. 2d 14, 18 (S.D.N.Y. 2001) (finding claims preempted by SLUSA where the class definition necessarily included persons who purchased their shares after Merrill Lynch made allegedly misleading statements, even though class also included persons who already held shares at the time the alleged misstatements were made).

23. The misstatements and omissions of material fact and manipulative practices alleged by plaintiffs also meet SLUSA's requirement that they have been made or oc-

curred "in connection with" the purchases and sales of a covered security. SLUSA does not define the phrase "in connection with"; however, the identical phrase is used in Section 10(b) of the 1934 Act and courts construing SLUSA have looked to case law under the 1934 Act in interpreting this phrase. *See, e.g., Falkowski v. Imation Corp.*, 309 F.3d 1123, 1129 (9th Cir. 2002) (noting that because SLUSA employs language identical to the language of the 1933 and 1934 Acts, "it is logical to look to case law under the 1933 and 1934 Acts as a starting point for interpreting the phrase 'in connection with the purchase or sale'").

24. To satisfy the "in connection with" requirement for purposes of a Section 10(b) claim, a plaintiff need only show that he suffered injury as a result of deceptive practices "touching" his purchase or sale of securities. *Superintendent of Ins. of New York v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12-13 (1971). The Supreme Court repeatedly has held that this requirement must be construed "'not technically and restrictively, but flexibly'" in order to promote Section 10(b)'s remedial purpose. *See Affiliated Ute Citizens of Utah v. Unites States*, 406 U.S. 128, 151 (1972) (quoting *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 186 (1963)).

25. As plaintiffs allege, shares of open end mutual funds such as the Putnam International Equity Fund are "sold to investors such as Plaintiffs at a price based upon the net asset value ("NAV") per share plus applicable sales charges" and redeemed (bought back by the Fund) "at the NAV of the shares less any redemption charges." (Compl. ¶ 9 (emphasis added).) Class members who bought shares of the Fund at times when the NAV purportedly was "artificially inflated" as a result of defendants' alleged pricing practices, and class members who sold shares at times when the NAV purportedly was "artificially deflated" as a result of defendants' alleged pricing practices, would have suffered monetary damages as a result as a result of alleged manipulative practices that "touched" their purchases and sales of shares of the Fund.

Plaintiffs' allegations, therefore, meet the "in connection with" requirement of Section 10(b) and SLUSA.

26. In sum, plaintiffs have alleged misrepresentations and omissions of material fact and/or fraudulent devices or contrivances by defendants in connection with the purchases and sales of class members who purchased and/or sold shares of the Fund during the alleged class period. Plaintiffs' claims fall squarely within the four corners of SLUSA and, therefore, are preempted – notwithstanding plaintiffs' attempt to artfully plead their securities class action claims as state-law claims. For these reasons, removal under SLUSA is proper and any motion by plaintiffs to remand should be denied.[5]

Grounds for Removal on the Basis That the Complaint Presents a Substantial Federal Question

27. The artful pleading exception to the well-pleaded complaint rule applies not only where Congress has expressly preempted a field, but also where a plaintiff's complaint presents a "substantial federal question." *Lippitt v. Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1041 (9th Cir. 2003) (certain internal citations omitted).

28. Plaintiffs contend that defendants breached their duties to the class by "failing to know and implement applicable rules and regulations concerning the calculation of NAV." (Compl. ¶ 54(a).) However, defendants' duties with respect to the pricing of the Fund's shares arose *exclusively* under federal law. Specifically, SEC Rule 2a-4(a)(1), 17 C.F.R. 270.2a-4(a)(1), promulgated under § 2(a)(41) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(41), provides that "[p]ortfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the

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[5] SLUSA would not prevent the two named plaintiffs from asserting their purported state law claims on an individual basis; rather, it only preempts their ability to assert these claims on a class basis.

registered company." Indeed, plaintiffs allude to Rule 2a-4(a)(1) in paragraph 52 of their Complaint, wherein they allege that applicable regulations governing the pricing of the shares of the Fund were published on or about January 1, 1965.[6]

29. Furthermore, how registered investment companies *should* price the shares of foreign companies under SEC Rule 2a-4 presents a substantial, *disputed* question of federal law. Plaintiffs contend that these shares should be priced at "fair value" rather than at their last trading price as of the close of the foreign exchange. (Compl. ¶ 13.) However, in a 2001 letter to the Investment Company Institute, the SEC noted that "funds generally calculate their NAVs by using the closing prices of portfolio securities on the exchange or market (whether foreign or domestic) on which the securities principally trade." 2001 SEC No-Act LEXIS 543, at *3-4 (Apr. 30, 2001). The SEC further noted that "the closing prices of foreign securities may not reflect their market values at a fund's NAV calculation if an event that will affect the value of those securities ("significant event") has occurred since the closing prices were established on the foreign exchange or market, but before the fund's NAV calculation." *Id.* The SEC, therefore, concluded that if a fund determines that a "significant event" has occurred since the closing of the foreign market but before calculation of the fund's NAV, the fund must value the foreign security pursuant to a fair value pricing methodology. *Id.* at *8. Notably, however, the SEC declined to define what constitutes a "significant event" requiring "fair value pricing" of foreign securities. *Id.* at * 10-11.

30. The issue of what constitutes a "significant event" requiring "fair value pricing" of foreign shares held in a mutual fund's portfolio implicates important federal interests. Indeed, Congress repeatedly has indicated its in-

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[6] SEC Rule 2a-4 was published in the Federal Register on December 30, 1964. *See* 29 FR 19101.

tent that nationally marketed securities should be governed by *uniform standards*. *See, e.g., Patneaude v. Equitable Life Assurance Soc'y*, 290 F.3d 1020, 1026 (9th Cir. 2002) (explaining that the PSLRA, the National Securities Markets Improvements Act of 1996, and SLUSA, "demonstrate that Congress intended to provide national, uniform standards for securities markets and nationally marketed securities"). Accordingly, the issue of how mutual funds should price the shares of foreign securities under SEC Rule 2a-4 should be decided by the federal courts, not the various state courts. *Cf. D'Alessio v. NYSE, Inc.*, 258 F.3d 93 (2d Cir. 2001) (holding that claims "arose under" federal law where claims were predicated on alleged breached of certain duties imposed on the NYSE by the 1934 Act and would require a court to interpret federal law governing securities trading on a national exchange); *see also, e.g., Sparta Surgical Corp. v. NASD, Inc.*, 159 F.3d 1209, 1212 (9th Cir. 1998) ("[A]lthough Sparta's theories are posited as state law claims, they are founded on the defendants' conduct in suspending trading and de-listing the offering, the propriety of which must be exclusively determined by federal law.")

31. The Seventh Circuit, interpreting the Supreme Court's decision in *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804 (1986), has held that for a complaint to present a "substantial federal question" such that complete preemption may be found to exist, the plaintiff must have a private right of action under federal law. *See Seinfeld v. Austen*, 39 F.2d 761, 764 (7th Cir. 1994) ("Under *Merrell Dow* . . . 'if federal law does not provide a private right of action, then a state law action based on its violation perforce does not raise a "substantial" federal question.'" (quoting *Utley v. Varian Assocs., Inc.*, 811 F.2d 1279, 1283 (9th Cir.), *cert. denied*, 484 U.S. 824 (1987)); *see also Rogers v. Tyson Foods, Inc.*, 308 F.3d 785, 788 (7th Cir. 2002) ("Most circuits share our view that the existence of a private right of action under federal law is an antecedent of complete preemption.").

32. There are ample federal remedies available to plaintiffs with respect to the alleged conduct and harm of which they complain in this action. Indeed, myriad federal securities class actions have been filed in various United States district courts on behalf of shareholders of Putnam mutual funds, including the Putnam International Equity Fund, alleging violations of various provisions of the federal securities laws in connection with the very same NAV pricing practices at issue in this action. On November 12, 2003, the Putnam defendants, including the two defendants named in this action, filed a motion with the Judicial Panel on Multidistrict Litigation seeking the transfer of the various actions to the United States District Court for the District of Massachusetts for coordinated or consolidated pretrial proceedings. As of that date, five actions were pending in the District of Massachusetts, six actions were pending in the Southern District of New York, and one action had been removed from this Court to the Southern District of Illinois. On November 24, 2003, the Putnam defendants filed a Notice of Related Actions with the Judicial Panel seeking the transfer of two additional actions filed in the District of Massachusetts and one additional action filed in the Southern District New York. On November 25, 2003, the Putnam defendants filed an additional Notice of Related Actions with the Judicial Panel seeking the transfer of six additional actions pending in the Southern District of New York, one additional action pending in the District of Massachusetts and one additional action pending in the Northern District of California. The Judicial Panel has not yet ruled on the Putnam defendants' motion.

33. To conclude, because plaintiffs' claims are predicated on alleged violations of federal law, because there are substantial disputed questions as to the interpretation of that law, and because plaintiffs have remedies available to them under federal law, the Court should find that removal is proper on the ground that this action presents a "substantial federal question," as well as on the

ground that plaintiffs' state-law class action claims are preempted by SLUSA.

Dated: December 15, 2003

[attorney name and address blocks omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 03-CV-853-GPM

STEVE AND BETH DUDLEY,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,
Plaintiffs,

v.

PUTNAM INVESTMENT FUNDS AND
PUTNAM INVESTMENT MANAGEMENT, LLC,
Defendants.

[Filed Dec. 15, 2003]

NOTICE OF REMOVAL

To: All Counsel on the Attached Service List

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441 and 1446 and the applicable provisions of the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), defendants Putnam Investment Funds and Putnam Investment Management, LLC (collectively, "Putnam") hereby remove the matter entitled *Steve and Beth Dudley, Individually and on behalf of all others similarly situated, Plaintiffs, v. Putnam Investment Funds and Putnam Investment Management, LLC, Defendants*, cause number 03-L-1540 (hereinafter referred to as "State Court Action"), from the Circuit Court of Madison County, Illinois, to the United States District Court for the Southern District of Illinois. This action is removable under SLUSA because it is a "covered class action" alleging fraud in connection with the purchase or sale of "covered securities," as those terms are defined by SLUSA. The action also is removable on the ground that it presents a

"substantial federal question" in that any duties defendants had with respect to the pricing of shares of the Putnam International New Opportunities Fund arose exclusively under the federal securities laws, and plaintiffs have available remedies under the federal securities laws.

Background of the Action and Plaintiffs' Allegations

1. On November 10, 2003, plaintiffs commenced the State Court Action in the Circuit Court of Madison County, Illinois.

2. Defendants Putnam Investment Funds and Putnam Investment Management, LLC were served with copies of the Summons and Complaint in the State Court Action on November 19, 2003. A copy of all process, pleadings and orders from the State Court Action are attached hereto as Exhibit A. All defendants consent to removal and this Notice of Removal has been filed within thirty days of service of the Summons and Complaint on the first-served defendant.

3. The Complaint concerns the manner in which Putnam allegedly determined the prices at which shares of the Putnam International New Opportunities Fund (the "Fund") would be sold to the investing public. Specifically, plaintiffs allege that:

(a) the Fund is an open-end mutual fund whose shares are sold to investors at prices based upon the net asset value ("NAV") per share plus applicable sales charges (Compl. ¶ 9);

(b) investors may redeem their shares at the NAV of the shares less any redemption charges (Compl. ¶ 9);

(c) defendants recalculate the NAV of the Fund's shares once each business day at the close of trading on the New York Stock Exchange (the "NYSE") at 4:00 p.m. Eastern Time and report the NAV to the National Association of Securities Dealers (the "NASD") for dissemination to the public (Compl. ¶ 11);

(d) securities issued by non-U.S. companies are a significant portion of the Fund's portfolio (Compl. ¶ 12);

(e) the foreign exchanges on which the Fund's non-U.S. securities are traded close from five to fifteen hours ahead of Eastern Standard Time (Compl. ¶ 12);

(f) there is a positive correlation between price movements in the U.S. market and those in the foreign markets such that it is possible to predict the next-day movement of prices in the foreign markets based on the performance of the U.S. market (Compl. ¶ 13);

(g) despite the fact that the prices of the foreign securities held by the Fund are "stale" as of 4:00 p.m. Eastern Time, when the Fund calculates its NAV, and despite the correlation between price movements in the U.S. market and future price movements in the foreign markets, the Fund uses the last trade price in the home market for each of its foreign securities when calculating the daily NAV. (Compl. ¶12, 13, 16.)[1]

4. Plaintiffs contend that defendants' alleged pricing practices for non-U.S. securities "have exposed long term shareholders to market timing traders who regularly purchase and redeem Defendants' shares as part of a profitable trading strategy." (Compl. ¶ 29.) According to plaintiffs,

(a) "market timers who buy Defendants' fund shares on days when the United States market moves up are buying discounted shares at the expense of other fund shareholders because the funds [sic] underlying foreign securities are undervalued as of the time of the share purchase" (Compl. ¶ 30); and

(b) "market timers who sell (redeem) Defendants' fund shares on days when the United States market moves down are selling (redeeming) shares at a premium

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[1] Defendants do not concede the truth of plaintiffs' allegations regarding their policies or practices in pricing foreign securities for purposes of determining the Fund's daily NAV.

at the expense of other fund shareholders because the underlying foreign securities are overvalued as of the time of the sale (redemption). (Compl. ¶ 31.)

5. Plaintiffs claim the activities of the market timers result in dilution of the value of their shares and a transfer of wealth from the long-term buy-and-hold shareholders to the market timers. (Compl. ¶¶ 33, 34.)

6. Based on these allegations, plaintiffs assert two separate counts against defendants:

(a) In Count I of the Complaint, plaintiffs contend that defendants breached their duty of care to plaintiffs by:

(i) "failing to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International New Opportunities Fund's portfolio of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices" (Compl. ¶ 49(a));

(ii) "failing to implement Putnam International New Opportunities Fund's portfolio valuation and share pricing policies and procedures"(Compl. ¶ 49(b); and

(iii) "allowing portfolio valuation and share pricing policies and procedures which benefitted market timing traders of Putnam International New Opportunities Fund's shares at the expense of long term shareholders." (Compl. ¶ 49(c).)

(b) In Count II of the Complaint, plaintiffs contend that defendants acted "with utter indifference and conscious disregard" for plaintiffs' investments and "willfully and wantonly" breached their duties to plaintiffs (Compl. ¶ 54) by:

(i) "failing to know and implement applicable rules and regulations concerning the calculation of NAV" (Compl. ¶ 54(a));

(ii) "failing to properly evaluate on a daily basis whether a significant event affecting the value of Putnam International New Opportunities Fund's portfolio

of securities had occurred after the foreign trading markets for such securities had closed but before Defendants calculated NAV and share prices" (Compl. ¶ 54(b));

(iii) "failing to implement Putnam International New Opportunities Fund's portfolio valuation and share pricing policies and procedures" (Compl. ¶ 54(c)); and

(iv) "allowing portfolio valuation and share pricing policies and procedures which benefitted market timing traders of Putnam International New Opportunities Fund's shares at the expense of long term shareholders." (Compl. ¶ 54(d).)

7. Plaintiffs purport to bring this action on behalf of themselves and a putative class consisting of "all persons in the United States who have held shares of Putnam International New Opportunities Fund for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ('long term shareholders')." (Compl. ¶ 37.) Plaintiffs assert that the class period begins five years before the date of filing of the Complaint and continues through the date on which the Complaint was filed. (*Id.*)

Grounds for Removal Under SLUSA

8. In 1998 Congress enacted SLUSA, Pub. L. No 105-353, to prevent securities class action plaintiffs from evading the heightened pleading standards of the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), and the PSLRA's mandatory stay of discovery pending resolution of a motion to dismiss, by filing securities class actions in state courts. *Lander v. Hartford Life & Annuity Ins. Co.*, 251 F.3d 101, 107-08 (2d Cir. 2001). SLUSA amended the Securities Act of 1933 (the "1933 Act") and the Securities Exchange Act of 1934 (the "1934 Act").

Those amendments are codified at 15 U.S.C. § 77p(b) and (c) and 15 U.S.C. § 78bb(f)(1) and (2), respectively.[2]

9. SLUSA's amendments to the 1934 Act provide, in pertinent part:

> (1) Class action limitations
>
> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal Court by any private party alleging –
>
> (A) a misrepresentation or omission of material fact in connection with the purchase or sale of a covered security; or
>
> (B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.
>
> (2) Removal of covered class actions
>
> Any covered class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

15 U.S.C. § 78bb(f).

10. SLUSA thus makes federal courts the exclusive venue for "covered class actions" alleging fraud in connection with the purchase or sale of "covered securities" and mandates that such class actions be governed exclusively by federal law. *Lander*, 251 F.2d at 108; *see also* H.R. CONF. REP. NO. 105-803, at 13 (1998) (stating that SLUSA "establishes uniform rules for securities class action litigation involving our national capital markets" and that "class actions relating to a 'covered security' . . . alleging fraud or manipulation must be maintained pursuant to

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[2] Citations herein are to the applicable provisions of the 1934 Act, as amended by the SLUSA.

the provisions of Federal securities law, in Federal court").

11. Despite plaintiffs' attempt to avoid removal under SLUSA by couching their Complaint as a state-law breach of fiduciary duty suit on behalf of "holders" of shares of the Fund, a careful examination of plaintiffs' allegations shows that this case falls squarely within the contours of SLUSA.

12. **Covered Class Action.** An action is a "covered class action" for purposes of SLUSA if it involves common questions of law or fact that predominate over any individual questions and is brought (i) on behalf of more than 50 persons or prospective class members" or (ii) on a representative basis by one or more parties suing on behalf of themselves and other unnamed parties similarly situated. 15 U.S.C. § 78bb(f)(5)(B). This action is a "covered class action" within the meaning of SLUSA because the two named plaintiffs purport to bring this action on behalf of themselves and all others similarly situated (Compl. p.1) and allege that "[c]ommon questions of law or fact predominate over any questions affecting only individual members of the Class." (Compl. ¶ 40.)

13. **Covered Securities.** A "covered security" for purposes of SLUSA is one that meets the definition of a "covered security" provided in § 18(b) of the 1933 Act, 15 U.S.C. § 77r(b), at the time the misrepresentation, omission, manipulative act or deceptive conduct is alleged to have occurred. 15 U.S.C. § 78bb(f)(5)(E). The 1933 Act's definition of "covered securities" includes "a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940." 15 U.S.C. § 77r(b)(2). The shares of the Putnam International New Opportunities Fund are "covered securities" within the meaning of SLUSA because the shares are issued by an investment company registered under the Investment Company Act of 1940. As set forth in note 1 to the financial statements in the Putnam International New Opportunities Fund's Annual

Report for its fiscal year ended September 30, 2003 (available at Putnam's Website at www.putnam.com): "Putnam International New Opportunities Fund (the 'Fund') is a series of Putnam Investment Funds (the "Trust"), which is registered under the Investment Company Act of 1940, as amended, as a diversified, open-end management investment company."

14. **Alleged Misrepresentations and Omissions of Material Fact.** Plaintiffs allege that defendants "promoted, marketed, and sold shares of the Fund to the investing public nationwide." (Compl. ¶ 2.) Plaintiffs claim that defendants marketed the Fund as having "*the stated goal* of providing long term capital growth to investors who hold shares of the fund." (Compl. ¶ 45 (emphasis added).) Plaintiffs, in essence, contend that this "stated goal" was false because, according to plaintiffs, defendants' practices in calculating the daily NAV of the Fund's shares "have exposed long term shareholders to market timing traders" (Compl. ¶ 29) and have resulted in a "transfer of wealth from the non-trading long term buy and hold shareholders to the market timing traders . . . through dilution." (Compl. ¶ 33.)

15. Plaintiffs further allege that defendants publicly reported the allegedly "artificially inflated" or "artificially deflated" daily NAV to the Fund's shareholders and the investing public by reporting the calculated NAV to the NASD for dissemination to the public (Compl. ¶ 11), and through defendants' interactive Website, which defendants allegedly use to communicate with shareholders regarding the performance of the Fund and the Fund's investments (Compl. ¶ 3.)

16. By contending that defendants misrepresented that the Fund was appropriate for long-term buy-and-hold investors and misrepresented the daily NAV of the Fund's shares plaintiffs have alleged that defendants misrepresented and omitted material facts concerning their investments in, and the value of, the Fund's shares.

17. **Alleged Manipulative Device or Contrivance.** Even if plaintiffs had not alleged any misrepresentations or omissions of material fact, SLUSA does not apply *only* where there are alleged misrepresentations or omissions of material facts. Rather, SLUSA *also* applies to class actions alleging that "the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(B).[3]

18. The essence of plaintiffs' Complaint is that defendants engaged in *manipulation* of the Fund's share prices in that they allegedly caused the share prices to be artificially inflated or deflated at various times by not adjusting the NAV, which they allegedly determined by using the last trade prices on the foreign markets, for "significant events" occurring subsequent to the close of those markets and prior to 4:00 p.m. Eastern Time. (Compl. ¶¶ 49(a), 54(b).) The United States Supreme Court's decision in *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462 (1977), leaves no doubt that defendants' alleged actions constitute "manipulation" within the meaning of Section 10(b) of the 1934 Act. In *Santa Fe* the Supreme Court explained:

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[3] The language of SLUSA tracks the language of Section 10(b) of the 1934 Act, 15 U.S.C. § 78j(b), which makes it unlawful for any person, in connection with the purchase or sale of a security, to use or employ "any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." Securities and Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated under Section 10(b) of the 1934 Act, makes it unlawful for any person, in connection with the purchase or sale of a security "(a) to employ any device, scheme or artifice to defraud, (b) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person."

> Manipulation is "virtually a term of art when used in connection with securities markets." . . . The term refers generally to practices, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity.

Id. at 476 (emphasis added, citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976) and 15 U.S.C. § 78i).

19. Thus, the fact that plaintiffs have styled their Complaint as one for alleged breach of fiduciary duties, rather than as a misrepresentation or omission action, does not take this case outside the ambit of the federal securities laws and the removal provisions of SLUSA governing securities class actions. *See, e.g., Denton v. H&R Block Fin. Advisors, Inc.*, 2001 U.S. Dist. LEXIS 15831, at *10 (N.D. Ill. Oct. 3, 2001) ("While it is true that allegations of breach of fiduciary duty alone will not sufficiently plead a securities fraud claim, a breach of fiduciary duty may give rise to a Rule 10b-5 claim where the alleged conduct 'can fairly be viewed as manipulative or deceptive within the meaning of the [Securities Act].") (Kocoras, Chief Judge.) (citing *Santa Fe*, holding that alleged claim for breach of fiduciary duty was preempted by SLUSA and properly removed to federal court, and dismissing the action).[4]

20. **In Connection With the Purchase of Sale of a Security.** SLUSA only preempts claims alleging misrepresentations or omissions of material facts or manipulative or deceptive devices or contrivances that occur "in connection with the purchase or sale" of covered securities. 15 U.S.C. § 88bb(f)(1)(A) and (B) (emphasis added).

21. In an effort to plead around SLUSA's "purchase or sale" requirement, plaintiffs define the proposed class to include "all persons in the United States who have held shares in Putnam International New Opportunities Fund

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[4] District court cases are cited herein by way of example of analysis in similar cases.

for more than fourteen days from the date of purchase to the date of sale (redemption) or exchange ('long term shareholders')." (Compl. ¶ 37 (emphasis added).) Plaintiffs' attempt at artful pleading is unavailing. To avoid removal under SLUSA plaintiffs would have to define the class to include *only* those persons who held shares of the Fund at the beginning of the 5-year class period and continued to hold those shares as of the end of the 5-year class period. The class as defined, however, *also* includes (i) persons who held shares of the Fund at the beginning of the 5-year class period and continued to hold the shares for at least 14-days before selling them during the class period; (ii) persons who purchased shares during the 5-year class period and continued to hold them throughout the entire class period and (iii) persons who purchased shares during the class period and held them for at least 14-days before selling them during the class period.

22. SLUSA applies where the class as defined by plaintiffs *necessarily* includes purchasers and/or sellers of a covered security. *See, e.g., Riley v. Merrill Lynch, Pierce, Fenner & Smith*, 292 F.3d 1334, 1345 (11th Cir. 2002) ("[W]hen a claim that sweeps within its ambit actual purchases and sales of securities is covered by SLUSA, a plaintiff may not avoid SLUSA's restrictions simply by alleging that a given misrepresentation caused him both to purchase and hold a particular security."); *Professional Mgmt. Assocs., Inc. v. KPMG LLP*, 335 F.3d 800, 803 (8th Cir. 2003) (where a complaint implicitly alleges that misrepresentations and omissions were made in connection with the purchase of securities, the plaintiff "cannot avoid preemption by asserting it is only claiming damages suffered as a result of holding its stock"); *Hardy v. Merrill Lynch, Pierce, Fenner & Smith*, 189 F. Supp. 2d 14, 18 (S.D.N.Y. 2001) (finding claims preempted by SLUSA where the class definition necessarily included persons who purchased their shares after Merrill Lynch made allegedly misleading statements, even though class also included persons who already held shares at the time the alleged misstatements were made).

23. The misstatements and omissions of material fact and manipulative practices alleged by plaintiffs also meet SLUSA's requirement that they have been made or occurred "in connection with" the purchases and sales of a covered security. SLUSA does not define the phrase "in connection with"; however, the identical phrase is used in Section 10(b) of the 1934 Act and courts construing SLUSA have looked to case law under the 1934 Act in interpreting this phrase. *See, e.g., Falkowski v. Imation Corp.*, 309 F.3d 1123, 1129 (9th Cir. 2002) (noting that because SLUSA employs language identical to the language of the 1933 and 1934 Acts, "it is logical to look to case law under the 1933 and 1934 Acts as a starting point for interpreting the phrase 'in connection with the purchase or sale'").

24. To satisfy the "in connection with" requirement for purposes of a Section 10(b) claim, a plaintiff need only show that he suffered injury as a result of deceptive practices "touching" his purchase or sale of securities. *Superintendent of Ins. of New York v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12-13 (1971). The Supreme Court repeatedly has held that this requirement must be construed "'not technically and restrictively, but flexibly'" in order to promote Section 10(b)'s remedial purpose. *See Affiliated Ute Citizens of Utah v. Unites States*, 406 U.S. 128, 151 (1972) (quoting *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 186 (1963)).

25. As plaintiffs allege, shares of open end mutual funds such as the Putnam International New Opportunities Fund are "sold to investors such as Plaintiffs at a price based upon the net asset value ("NAV") per share plus applicable sales charges" and redeemed (bought back by the Fund) "at the NAV of the shares less any redemption charges." (Compl. ¶ 9 (emphasis added).) Class members who bought shares of the Fund at times when the NAV purportedly was "artificially inflated" as a result of defendants' alleged pricing practices, and class members who sold shares at times when the NAV purportedly was "artificially deflated" as a result of defendants' al-

leged pricing practices, would have suffered monetary damages as a result as a result of alleged manipulative practices that "touched" their purchases and sales of shares of the Fund. Plaintiffs' allegations, therefore, meet the "in connection with" requirement of Section 10(b) and SLUSA.

26. In sum, plaintiffs have alleged misrepresentations and omissions of material fact and/or fraudulent devices or contrivances by defendants in connection with the purchases and sales of class members who purchased and/or sold shares of the Fund during the alleged class period. Plaintiffs' claims fall squarely within the four corners of SLUSA and, therefore, are preempted – notwithstanding plaintiffs' attempt to artfully plead their securities class action claims as state-law claims. For these reasons, removal under SLUSA is proper and any motion by plaintiffs to remand should be denied.[5]

Grounds for Removal on the Basis That the Complaint Presents a Substantial Federal Question

27. The artful pleading exception to the well-pleaded complaint rule applies not only where Congress has expressly preempted a field, but also where a plaintiff's complaint presents a "substantial federal question." *Lippitt v. Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1041 (9th Cir. 2003) (certain internal citations omitted).

28. Plaintiffs contend that defendants breached their duties to the class by "failing to know and implement applicable rules and regulations concerning the calculation of NAV." (Compl. ¶ 54(a).) However, defendants' duties with respect to the pricing of the Fund's shares arose *exclusively* under federal law. Specifically, SEC Rule 2a-4(a)(1), 17 C.F.R. 270.2a-4(a)(1), promulgated under § 2(a)(41) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(41), provides that "[p]ortfolio securities

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[5] SLUSA would not prevent the two named plaintiffs from asserting their purported state law claims on an individual basis; rather, it only preempts their ability to assert these claims on a class basis.

with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company." Indeed, plaintiffs allude to Rule 2a-4(a)(1) in paragraph 52 of their Complaint, wherein they allege that applicable regulations governing the pricing of the shares of the Fund were published on or about January 1, 1965.[6]

29. Furthermore, how registered investment companies *should* price the shares of foreign companies under SEC Rule 2a-4 presents a substantial, *disputed* question of federal law. Plaintiffs contend that these shares should be priced at "fair value" rather than at their last trading price as of the close of the foreign exchange. (Compl. ¶ 13.) However, in a 2001 letter to the Investment Company Institute, the SEC noted that "funds generally calculate their NAVs by using the closing prices of portfolio securities on the exchange or market (whether foreign or domestic) on which the securities principally trade." 2001 SEC No-Act LEXIS 543, at *3-4 (Apr. 30, 2001). The SEC further noted that "the closing prices of foreign securities may not reflect their market values at a fund's NAV calculation if an event that will affect the value of those securities ("significant event") has occurred since the closing prices were established on the foreign exchange or market, but before the fund's NAV calculation." *Id.* The SEC, therefore, concluded that if a fund determines that a "significant event" has occurred since the closing of the foreign market but before calculation of the fund's NAV, the fund must value the foreign security pursuant to a fair value pricing methodology. *Id.* at *8. Notably, however, the SEC declined to define what constitutes a "significant event" requiring "fair value pricing" of foreign securities. *Id.* at * 10-11.

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[6] SEC Rule 2a-4 was published in the Federal Register on December 30, 1964. *See* 29 FR 19101.

30. The issue of what constitutes a "significant event" requiring "fair value pricing" of foreign shares held in a mutual fund's portfolio implicates important federal interests. Indeed, Congress repeatedly has indicated its intent that nationally marketed securities should be governed by *uniform standards*. *See, e.g., Patneaude v. Equitable Life Assurance Soc'y*, 290 F.3d 1020, 1026 (9th Cir. 2002) (explaining that the PSLRA, the National Securities Markets Improvements Act of 1996, and SLUSA, "demonstrate that Congress intended to provide national, uniform standards for securities markets and nationally marketed securities"). Accordingly, the issue of how mutual funds should price the shares of foreign securities under SEC Rule 2a-4 should be decided by the federal courts, not the various state courts. *Cf. D'Alessio v. NYSE, Inc.*, 258 F.3d 93 (2d Cir. 2001) (holding that claims "arose under" federal law where claims were predicated on alleged breached of certain duties imposed on the NYSE by the 1934 Act and would require a court to interpret federal law governing securities trading on a national exchange); *see also, e.g., Sparta Surgical Corp. v. NASD, Inc.*, 159 F.3d 1209, 1212 (9th Cir. 1998) ("[A]lthough Sparta's theories are posited as state law claims, they are founded on the defendants' conduct in suspending trading and de-listing the offering, the propriety of which must be exclusively determined by federal law.")

31. The Seventh Circuit, interpreting the Supreme Court's decision in *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804 (1986), has held that for a complaint to present a "substantial federal question" such that complete preemption may be found to exist, the plaintiff must have a private right of action under federal law. *See Seinfeld v. Austen*, 39 F.2d 761, 764 (7th Cir. 1994) ("Under *Merrell Dow* . . . 'if federal law does not provide a private right of action, then a state law action based on its violation perforce does not raise a "substantial" federal question.'" (quoting *Utley v. Varian Assocs., Inc.*, 811 F.2d 1279, 1283 (9th Cir.), *cert. denied*, 484 U.S. 824 (1987)); *see also Rogers v. Tyson Foods, Inc.*, 308 F.3d

785, 788 (7th Cir. 2002) ("Most circuits share our view that the existence of a private right of action under federal law is an antecedent of complete preemption.").

32. There are ample federal remedies available to plaintiffs with respect to the alleged conduct and harm of which they complain in this action. Indeed, myriad federal securities class actions have been filed in various United States district courts on behalf of shareholders of Putnam mutual funds, including the Putnam International Equity Fund, alleging violations of various provisions of the federal securities laws in connection with the very same NAV pricing practices at issue in this action. On November 12, 2003, the Putnam defendants, including the two defendants named in this action, filed a motion with the Judicial Panel on Multidistrict Litigation seeking the transfer of the various actions to the United States District Court for the District of Massachusetts for coordinated or consolidated pretrial proceedings. As of that date, five actions were pending in the District of Massachusetts, six actions were pending in the Southern District of New York, and one action had been removed from this Court to the Southern District of Illinois. On November 24, 2003, the Putnam defendants filed a Notice of Related Actions with the Judicial Panel seeking the transfer of two additional actions filed in the District of Massachusetts and one additional action filed in the Southern District New York. On November 25, 2003, the Putnam defendants filed an additional Notice of Related Actions with the Judicial Panel seeking the transfer of six additional actions pending in the Southern District of New York, one additional action pending in the District of Massachusetts and one additional action pending in the Northern District of California. The Judicial Panel has not yet ruled on the Putnam defendants' motion.

33. To conclude, because plaintiffs' claims are predicated on alleged violations of federal law, because there are substantial disputed questions as to the interpretation of that law, and because plaintiffs have remedies available to them under federal law, the Court should find

that removal is proper on the ground that this action presents a "substantial federal question," as well as on the ground that plaintiffs' state-law class action claims are preempted by SLUSA.

Dated: December 15, 2003

[attorney name and address blocks omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 04-CV-56-DRH

AVERY JACKSON, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiffs,

v.

VAN KAMPEN SERIES FUND, INC. AND
VAN KAMPEN INVESTMENT ADVISORY CORP.,
Defendants.

[Filed Jan. 22, 2004]

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendants Van Kampen Investment Advisory Corp. and Van Kampen Series Fund, Inc., hereby notice the removal to this Court of Cause No. 03 L 2036 from the Circuit Court of Madison County, Illinois. In support of this notice, Defendants allege as follows:

1. Plaintiff initiated this action by filing a Summons and Complaint naming Defendants in the Circuit Court of Madison County, Illinois (the "State Court"). Pursuant to 28 U.S.C. § 1446(a), a complete copy of the State Court file in this action is attached hereto as Exhibit A, which consists of true and correct copies of the Summons and Complaint. No other proceedings have taken place in State Court as of the date of the filing of this Notice.

2. Defendant Van Kampen Investment Advisory Corp. was served with a copy of the Summons and Complaint on December 24, 2003. Defendant Van Kampen Series Fund, Inc. was served with a copy of the Summons and Complaint on December 29, 2003. Pursuant to 28

U.S.C. § 1446(b), Defendants timely file this Notice within thirty (30) days of the receipt through service of Plaintiff's Summons and Complaint by the first Defendant to be served. All Defendants consent to removal.

3. Pursuant to 28 U.S.C. § 1446(d), Defendants are filing a copy of this Notice with the Clerk of the Circuit Court of Madison County, Illinois and have served a copy on Plaintiff.

4. Venue is proper under 28 U.S.C. § 1446(a) because this case is pending in the Circuit Court of Madison County, Illinois. This Court is the district and division "embracing the place where [the State Court] action is pending." 28 U.S.C. § 1441(a).

5. As set forth below, removal of this action is proper under 28 U.S.C. §§ 1331 and 1441 because the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") confers jurisdiction and because the Complaint presents a substantial federal question.

6. In his Complaint, Plaintiff alleges that Defendants priced shares in the Van Kampen International Magnum Fund based on the net asset value ("NAV") of the Fund, which was determined once per day at the close of trading on the New York Stock Exchange. According to Plaintiff, Defendants failed to consider various factors in determining the NAV, and this failure by Defendants exposed him and other shareholders in the Fund to market timing traders, thereby diluting the value of their holdings and voting rights. *See* Compl., ¶¶ 9-12, 28-36.

7. Plaintiff alleges that Defendants' conduct in determining the NAV amounted to a breach of fiduciary duty owed to shareholders of the Van Kampen International Magnum Fund. *Id.*, ¶¶ 48-50, 52-54.

8. Plaintiff purports to bring this action on behalf of himself and a putative class consisting of all other persons in the United States who have held shares in the Van Kampen International Magnum Fund for more than fourteen days at any time during the last five years. *Id.*, ¶¶ 37-43. Thus, this class includes individuals who pur-

chased and sold shares of the Van Kampen International Magnum Fund during this time period.

SLUSA Confers Jurisdiction

9. This Court has original jurisdiction over this action pursuant to SLUSA, and thus, this action is removable pursuant to 15 U.S.C. §§ 77p(c) and 78bb(f)(2) and 28 U.S.C. §§ 1331 and 1441.

10. Under SLUSA, federal courts are the exclusive venue for "covered class actions" alleging fraud in connection with the purchase or sale of "covered securities." 15 U.S.C. §§ 77p(b)-(c) and 78bb(f). In order for SLUSA to apply, (1) the action must be a "covered class action," (2) the plaintiff's claims must be based on state law, (3) the action must involve a "covered security," and (4) the plaintiff must allege that the defendant made misrepresentations or omissions of material fact or used a manipulative or deceptive device in connection with the purchase or sale of covered securities. *See Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 292 F.3d 1334, 1342 (11th Cir. 2002); *see also Lander v. Hartford Life & Annuity Ins. Co.*, 251 F.3d 101, 107-08 (2d Cir. 2001). Plaintiff's Complaint satisfies each of these elements.

11. First, this action is a "covered class action" under SLUSA because Plaintiff seeks to recover damages for himself and on behalf of an alleged class of unnamed other shareholders in the Van Kampen International Magnum Fund who are similarly situated, (Compl., ¶¶ 37-43), and because Plaintiff alleges that questions of law and fact common to the members of the alleged class predominate over any questions affecting only individual persons or alleged class members. *Id.*, ¶ 40. *See* 15 U.S.C. § 78bb(f)(5)(B).

12. Second, Plaintiff's claims are state law claims based on Defendants' alleged negligence and alleged breach of fiduciary duties under Illinois state law. *See* Compl., ¶¶ 48-50, 52-54.

13. Third, this action involves a "covered security" under SLUSA because shares of the Van Kampen Interna-

tional Magnum Fund are offered by an investment company registered under the Investment Company Act of 1940. *See* 15 U.S.C. § 78bb(f)(5)(E).

14. Fourth, Plaintiff alleges misrepresentations or omissions of material fact by Defendants in connection with the purchase or sale of covered securities (Compl., ¶¶ 8, 29, 33-34, 45, 49, 53), and that Defendants used or employed a manipulative or deceptive device or contrivance in connection with the purchase or sale of covered securities. *Id.*, ¶¶ 29, 34-35, 49, 53.

15. Specifically, Plaintiff alleges that Defendants "have been tremendously successful in convincing investors such as Plaintiff to hold their fund shares by urging investors to invest for the long term and by effectively marketing the various advantages of long term ownership of funds over direct investment. . . ." *Id.*, ¶ 8. Further, Plaintiff alleges that Defendants operated the Van Kampen International Magnum Fund "with the stated goal of providing long term capital growth to investors who hold shares of the fund." *Id.*, ¶ 45. Plaintiff alleges that these representations were false because Defendants "use[d] stale prices in valuing their fund shares and setting their daily NAVs . . . expos[ing] long term shareholders to market timing traders who regularly purchase and redeem Defendants' shares as part of a profitable trading strategy." *Id.*, ¶ 29.

16. Similarly, Plaintiff alleges that Defendants manipulated the pricing of shares in the Van Kampen International Magnum Fund by "failing to make daily adjustments based upon positive correlations between upward or downward movements in United States and foreign markets and by choosing to use stale prices in valuing their fund shares and daily NAVs . . ." *Id.*, ¶ 29. Plaintiff contends that Defendants' practices caused "[l]ong term shareholders [to] suffer a dilution of their equity interests and voting rights . . . ." *Id.*, ¶ 34.

17. Plaintiff alleges that Defendants' alleged misconduct occurred in connection with the purchase or sale of

covered securities because Plaintiff's proposed class includes persons who purchased or sold shares in the Van Kampen International Magnum Fund during the purported class period. *See, e.g., Riley*, 292 F.3d at 1345 ("[W]hen a claim that sweeps within its ambit actual purchases or sales of stock *is* covered by SLUSA, a plaintiff may not avoid SLUSA's restrictions simply by alleging that a given misrepresentation caused him to *both* to purchase and hold a particular security.") (emphasis in original); *Hardy v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 189 F. Supp. 2d 14, 19-20 (S.D.N.Y. 2001) (denying motion to remand because the plaintiff's purported class included, not only persons who held on to their stock as a result of the defendant's alleged misrepresentations, but also persons who purchased shares after the defendant's alleged misrepresentations).

The Complaint Presents a Substantial Federal Question

18. Removal also is appropriate in this case because the merits of Plaintiff's Complaint turn on a substantial issue of federal law. As the United States Supreme Court recognized in *Franchise Tax Bd. of the State of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 13 (1983), even though a plaintiff might plead its claims under state law, its "case might still 'arise under' the laws of the United States if a well-pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties."

19. In this case, Plaintiff alleges that Defendants "fail[ed] to implement [the Fund's] portfolio valuation and share pricing policies and procedures. . . ." *See* Compl., ¶ 53(iii). These policies and procedures are defined by reference to federal law, including SEC Rule 2a-4(a)(1). However, the question of how registered investment companies should price shares of foreign companies under SEC Rule 2a-4(a)(1) is a substantial, disputed question of federal law. *See, e.g.*, 2001 SEC No-Act LEXIS 543, at *3-

4, 10-11 (Apr. 30, 2001) (determining that if a "significant event" has occurred since the closing of a foreign market but before the calculation of an investment fund's NAV, the fund must value the relevant foreign securities pursuant to "fair value pricing" methodology, but declining to define what constitutes a "significant event" requiring "fair value pricing" of foreign securities).

20. Accordingly, removal is appropriate because Plaintiff's Complaint presents a substantial federal question.

Dated this 22th day of January, 2004.

[attorney name and address blocks omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 04-CV-355-MJR

TERRY SPURGEON, AS CUSTODIAN FOR THE BENEFIT OF JAMES E. SPURGEON, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiff,

v.

PACIFIC LIFE INSURANCE COMPANY,
Defendant.

[Filed May 21, 2004]

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant PACIFIC LIFE INSURANCE COMPANY ("Pacific Life") files this Notice of Removal. In further support of this removal petition, defendant relies on the Declaration of Adrian Griggs, filed herewith.

I. INTRODUCTION

1. Plaintiff dismissed an earlier complaint while it was pending in this Court but before this Court had made any rulings. The specific allegations in his new complaint and defendant's support of this Notice of Removal present many issues and arguments this Court has not had the opportunity to consider before, notwithstanding the number of market-timing securities cases that various parties have attempted to remove to this Court in previous months.

2. We remove on the following grounds:

• Complete preemption by the National Securities Markets Improvement Act of 1996. This statute replaced

the dual federal and state regulation of securities and provided for nationwide securities to be regulated under federal law, and state or regional securities to be regulated under state law. See Pt. IV.A.1.

• Complete preemption by the Investment Company Act of 1940. This Notice analyzes the interaction of the Act's express preemption and substantive provisions. Congress, for example, demonstrated its intent to exclude state jurisdiction over regulation of how securities prices are set by allocating regulatory control elsewhere – to private securities associations, subject to displacement only by the Securities Exchange Commission ("SEC"). Congress' empowerment of entities ordinarily subject to state jurisdiction underscores its intent to displace state regulation in this area. See Pt. IV.A.2.

• Complete preemption by the Securities Litigation Uniform Standards Act. The claims here are within the statute's scope because they are "in connection with" the purchases and sales of securities by market timers. This Notice demonstrates that Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975) is not to the contrary – that Blue Chip Stamp's limitation of private Section 10(b) actions to purchasers and sellers of securities was *not* an interpretation of the statute's "in connection with" language, but a judge-made rule to limit what it viewed as vexatious litigation. The Supreme Court said so expressly at the time and has reconfirmed it since, and has, in fact, consistently found that Section 10(b)'s "in connection with" language is satisfied by securities transactions by defendants or co-conspirators. This Notice then discusses the implications for SLUSA preemption in this case. See Pt. IV.A.3.

• Diversity based on plaintiff's request for injunctive relief. Plaintiff's stealth request for injunctive relief is not hidden by calling it "any other relief" the Court deems appropriate under Cal. Bus. & Prof. § 17200 because injunctive relief is the only "other" relief available under the

statute, that the plaintiff had not already specifically requested. See Pt. IV.B.

- Diversity based on plaintiff's allegations of claims belonging to Pacific Select Fund. Under Massachusetts law, which is applicable here, claims of mismanagement and breach of fiduciary duty belong only to the corporation or fund. Shareholders or investors injured only in the form of a loss in investment value can bring derivative claims only. See Pt. IV.B.

II. PROCEEDINGS TO DATE

3. On March 12, 2004, plaintiff Terry Spurgeon, "as custodian for the benefit of James E. Spurgeon II," individually and on behalf of all others similarly situated, filed suit against Pacific Life in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois. True and correct copies of all documents in the state court file are attached hereto as Exhibit A. The plaintiff served Pacific Life on May 10, 2004. Pacific Life timely files this notice of removal within the thirty days set forth in 28 U.S.C. § 1446(b).

III. THE NATURE OF THIS ACTION

4. Plaintiff has sued as custodian for the benefit of his son. He is a resident and citizen of Moro, Illinois. Complaint ¶ 1. Defendant, an insurance company organized under the laws of California, with its principal place of business in Newport Beach, California, is a citizen of California. Complaint ¶ 3; Declaration of Adrian Griggs, attached hereto, at ¶ 4.

5. Plaintiff's claims concern variable annuity contracts issued by Pacific Life to investors in 49 states and the District of Columbia, in which the contract holders have allocated premium payments and accumulated proceeds to mutual fund portfolios. Such amounts are held in a "Separate Account;" which segregates assets attributable to the contracts from assets in Pacific Life's general account. The Separate Account is subdivided into "subaccounts," each of which invests in a mutual fund portfolio, and owners of variable annuity contracts allocate their

premiums and account value among subaccounts, and, in so doing, direct the proceeds of their contracts to the mutual funds. Contract holders may transfer among the subaccounts, effectively "selling" units (shares) in one and "buying" units in another, at prices set each day based on the value assigned to each subaccount, which is derived from the net asset value per share of the underlying mutual fund portfolio. Complaint ¶¶ 4, 10, 11, 13, 14, 18; Griggs Decl. ¶ 5.

6. Pacific Life registers the interests in the Separate Account with the SEC as securities under the Securities Act of 1933 and registers the Separate Account as a Unit Investment Trust with the SEC under the Investment Company Act of 1940. Pacific Life is registered as an investment adviser under the Investment Advisers Act of 1940. Most of the portfolios available to contract holders are offered by Pacific Select Fund, a Massachusetts Business Trust which is registered as an open-end management investment company with the SEC under the Investment Company Act of 1940. Griggs Decl. ¶ 6. Pacific Life is the investment advisor for the mutual fund portfolios, but subcontracts management of most of the portfolios to subadvisors. Complaint ¶ 22.

7. Plaintiff alleges that market-timed trades in the mutual fund portfolios that included securities listed on foreign exchanges occurred because Pacific Life inaccurately valued subaccounts based on the most recent available market prices rather than by estimating prices based on the potential impact of fluctuation in the United States and world equity markets, in the value of American Depository Receipts, and in foreign currency futures markets. He further alleges that market timers captured an arbitrage profit that resulted in lower values for units held by other investors. Complaint ¶¶ 32, 35, 36, 37. Plaintiff purports to represent a nationwide class of those who, through ownership of any Pacific Life variable annuity product, held units in any subaccount invested in a fund including foreign securities that experienced market-

timed trading. Id. at ¶ 39. Plaintiff seeks certification of this class under 735 Ill. Comp. Stat. 5/2-801.

8. Plaintiff purchased an individual flexible premium deferred variable annuity contract from Pacific Life for his then-minor son pursuant to the Uniform Gifts to Minors Act. Complaint ¶ 2. Plaintiff alleges that he held units in the Lazard International Value Fund subaccount at all times relevant to this complaint; the relevant time period is not specified. Id. ¶ 38.

9. Plaintiff asserts four claims. Counts I and II allege negligence and gross negligence in determining the net asset value of subaccounts (and therefore prices for their units), and in permitting market-timed trades. Count III alleges breach of fiduciary duty for using market prices to determine the net asset value of subaccounts (and their units), for permitting market-timed trading; and for failing to disclose information about such trading and its potential impact. Plaintiff does not specify which state's common law is invoked. Complaint ¶¶ 53, 57, 62. Count IV alleges violations of Calif. Bus. & Prof. § 17200 on the grounds that Pacific Life's valuation and unit pricing practices were unlawful, unfair, and/or fraudulent business acts or practices within the meaning of the statute. Complaint ¶¶ 66, 74.

10. For Counts I, II, and III, plaintiff asks for compensatory damages, attorneys' fees, interest, and costs. For Count IV, plaintiff asks for restitution, costs, attorneys' fees, interest, *and* "any other relief" the Court deems appropriate in accordance with Cal. Bus. & Prof. § 17200. Complaint pp. 15-16. Plaintiff's request for "any other relief" for Count IV is a request for injunctive relief. Plaintiff limits the monetary relief requested to $75,000 per plaintiff or class member, exclusive of costs, fees, and interest. Complaint pp. 11, 12, 13, 16.

11. Although plaintiff purports to allege only state law claims, the rules he is attempting to impose – how nationally traded securities may be valued, how nationally traded securities in variable annuity contracts may be

transferred (i.e., bought and sold), and what must be disclosed about the nature and risks of investing in such securities to prospective and existing investors – are regulatory issues governed exclusively by federal securities laws.

IV. THE GROUNDS FOR REMOVAL

12. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331, federal question jurisdiction, and § 1332, diversity jurisdiction.

A. Federal Question Jurisdiction

13. This Court has federal question jurisdiction because the asserted state law claims are completely preempted by the National Securities Markets Improvement Act of 1996 ("NSMIA"), which replaced the former preemption/savings provision of the Securities Act of 1933 ("Securities Act") with a new preemption/savings provision, codified at 15 U.S.C. § 77r; and by the Investment Company Act of 1940 ("1940 Act"), codified at 15 U.S.C. § 80a-1 et seq., and SEC regulations adopted pursuant to it. In addition, the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), codified at 15 U.S.C. §§ 77p & 78bb(f), independently provides the basis for removal of this class action. Because these statutes wholly displace state jurisdiction over the matters plaintiff raises, his claims are considered to arise under federal law and are removable under 28 U.S.C. § 1441(b). The Supreme Court recently reconfirmed this view in Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 123 S. Ct. 2058, 2063 (2003).

(1) NSMIA- Section 18 of the Securities Act

14. All of plaintiff's claims are preempted by NSMIA – the claims that state law imposes obligations to disclose information about these securities, Complaint ¶ 62(e)& (f), the claims that state law imposes obligations as to the required methods of calculating subaccount unit (share) prices, Complaint ¶¶ 53, 57, 62, 65-76, and the claims that state law imposes an obligation to prevent market-timed trades from occurring, Complaint ¶¶ 53(e), 57(e), 62(g).

15. In 1996, Congress vested sole regulatory power over most regulation of *nationwide* securities in the SEC. See NSMIA, PL 104-290, 110 Stat. 3417 (1996). Congress determined that dual federal and state regulation was "redundant, costly, and ineffective," and concluded that "this duplicative regulation tends to raise the cost of capital to American issuers of securities without providing commensurate protection to investors or to our markets." H.R. Conf. Rep. No. 104-864 at 39 (1996). Therefore, Congress provided for securities that "are inherently national in nature" to be "subject to only Federal regulation," with states retaining power only to regulate intrastate and regional securities. Id. at 40.

16. Section 102 of NSMIA, entitled "Creation of National Securities Markets," replaced a provision preserving state regulation of securities, with a new Section 18 that expressly *preempts* state regulation if it directly or indirectly attempts to regulate what information must be disclosed about nationwide securities or directly or indirectly attempts to regulate the nature and quality of nationwide securities.

17. The statute defines which securities are considered nationwide and therefore exempt from such state regulation. The securities at issue here are exempt because they are issued by investment companies registered with the SEC. § 77r(b)(2), see, supra, ¶ 11.

18. Congress has occupied the entire field of disclosure obligations regarding what must be included in descriptions of nationally-traded securities. All state law that imposes disclosure requirements on nationally traded securities is completely preempted, whether it imposes requirements or conditions on an offering document directly by specific statutory language, or indirectly through tort law or general consumer protection statutes. See § 77r(a)(2)(A). Offering documents include any document that describes the securities that are available to investors, such as a prospectus, a statement of additional information, advertising, or sales literature. See § 77r(d)(1);

H.R. Rep. No. 104-622 at 30 (1996) (the provision "prohibits States from placing limits or imposing conditions upon . . . the use of offering documents . . . including advertising or sales literature used in connection with such offerings"). The disclosure claims plaintiff asserts in ¶ 62(e) and (f) of his complaint fall squarely within this preempted cause of action, and are thus removable under 28 U.S.C. § 1441.

19. Congress has similarly displaced state regulation of the standards that nationwide securities must meet. Any state law that limits or imposes any condition on the offer or sale of any security based on its merits is preempted, whether the state law pursues this result *directly or indirectly*. § 77r(a)(3). "Offer" and "sale" are defined in the statute as referring to *every* attempt to offer to dispose of or to buy a security or interest in a security for value. § 77b(a)(3).

20. A state tort law or statute that attempts to protect securities from dilution, by imposing a duty on an investment company or adviser to use particular methods of valuation or to prevent market-trading, falls within this preemption. Such a law aims at regulating the security's merit by improving investor returns (i.e., allegedly higher if there are fewer or no market-timed trades). A state imposing such rules therefore subjects investment companies to a choice between selling only securities that meet these standards – securities for which prices are set or trades are processed by the state-mandated methods – or risking punishment. Such state rules therefore seek to achieve *indirectly* the same result the state allegedly would achieve by reviewing securities on the basis of merit and imposing the conditions that they may be sold only if the investment companies undertake specified methods of valuation, or specific methods of preventing market-timed trades, or a guarantee that there will be no market-timed trades.

21. Because the claims plaintiff asserts in ¶¶ 53(a)-(e), 57 (a)-(e), 62 (a)-(g), and Count IV of the complaint ask

the Court to fashion exactly such duties from state tort law and California's statute, these claims fall squarely within this preempted cause of action and would, if found, be displaced by Section 18. They are therefore removable under 28 U.S.C. § 1441.

22. None of the exceptions provided in the new Section 18 apply here. States retain jurisdiction to bring enforcement actions for fraud, deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions. See § 77r(c)(1). Plaintiff, however, has not brought any claims under state fraud law, has not claimed that he or any class member was deceived, and has expressly disclaimed claims of any kind arising from plaintiff's or class member's purchase or sale of Pacific Life variable annuities or subaccount units. Complaint ¶ 40. Plaintiff's one mention of fraud, in Count IV, as a component of Cal. Bus. & Prof. § 17200, complains only about the general valuation and unit pricing policies and practices used by Pacific Life which plaintiff alleges resulted in lower quality securities than if there had been different valuation and pricing practices. There is no allegation that plaintiff or any class member was defrauded or deceived. Complaint ¶¶ 65, 66, 73.

23. In any event, the new Section 18 does not permit states to use their anti-fraud authority to regulate the quality of securities, as Congress made clear. See H.R. Rep. No. 104-622 at 34 (1996) ("In preserving State law against fraud and deceit, (including broker-dealer sales practice abuse), however, the Committee intends to prevent the States from indirectly doing what they have been prohibited from doing directly"); id. ("The legislation preempts authority that would allow the States to employ the regulatory authority they retain to reconstruct in a different form the regulatory regime for covered securities that Section 18 has preempted"); S. Rep. No. 104-293 at 6-7 (1996) ("The Committee clearly does not intend for the 'policing' authority to provide states with a means to undo the state preemption."). The only other state authority

preserved permits states to require notice filing and filing fees. See § 77r(c)(2).

(2) 1940 Act and SEC regulations adopted thereunder

24. Removal of the valuation claims asserted by plaintiff, Complaint ¶¶ 53(a)-(d), 57(a)-(d), 62(a)-(d), 65-77, is independently warranted under the 1940 Act because the 1940 Act and SEC regulations adopted pursuant to it completely preempt the field of regulation over determinations of net asset values of mutual fund portfolios and subaccount unit (share) prices.

25. The 1940 Act contains an express preemption/savings clause providing for states to retain jurisdiction over investment companies and the securities they issue only "insofar as such jurisdiction does not conflict with any provision of this title or of any rule, regulation, or order hereunder." See 15 U.S.C. § 80a-50.

26. Exercise of state jurisdiction over which pricing methods must be used to determine net asset values of mutual fund portfolios or unit (share) prices would conflict with the regulatory choices Congress enacted in the 1940 Act and is therefore completely preempted.

27. The 1940 Act expressly commits the regulatory role over valuation of securities to private securities associations and a federal agency. The Act permits associations to establish the rules by which their members set the prices of their own securities, see § 80a-22(a), and then commits the ultimate regulatory role over securities' valuation to the SEC, see § 80a-22(c). See also United States v. Nat'l Ass'n of Sec. Dealers, 422 U.S. 694, 710 & n.19 (1975) ("NASD"). State regulation of how the net asset values of funds and the pricing of units must be determined would conflict with the statutory provisions affirmatively conferring that power elsewhere.

28. State exercise of jurisdiction over valuation is also irreconcilable with Congress' decision to empower private associations to set those rules for their members, because private associations and their members are ordinarily

subject to state-imposed requirements. By providing instead for industry self-regulation through these associations, restrained only by the SEC's authority to override, Congress excluded state jurisdiction over the same subject matter.

29. Congress additionally excluded state jurisdiction by setting forth the rules governing valuation in the 1940 Act itself, subject to interpretation and adjustment only by the SEC. See §§ 80a-22(a), (c) (providing for prices to be set in relation to net asset value of securities), 80a-2(41) (defining how net asset value is to be computed).

30. The Seventh Circuit recently found state jurisdiction completely preempted based on far less specific provisions governing telephone service pricing. See Boomer v. AT&T Corp., 309 F.3d 404, 417-18 (7th Cir. 2002). The court ruled that the federal statutory requirement providing that long distance rates must be just and reasonable demonstrated "Congress's intent that federal law govern" long distance rates. The court further found that the scope of that preemption also included "the validity of the terms and conditions of long-distance service contracts," and therefore no challenge to the validity of the terms and conditions of long-distance telephone service agreements could be maintained under state law. Congress demonstrated its intent that federal law govern how securities are priced even more clearly – by requiring securities to be priced in relation to net asset value, setting forth how net asset value must be determined, and by expressly delegating the sole authority to adjust these rules to the SEC.

31. State jurisdiction is independently preempted by SEC regulations, 17 C.F.R. §§ 270.22c-1 & 270.2a-4, especially in light of Congress' express provision for SEC regulations to displace state jurisdiction. 15 U.S.C. § 80a-50. The SEC regulations define how current net asset values are to be determined, when net asset values and securities' prices may be determined, and how they apply to purchase or redemption orders (the "forward pricing"

rule). See also SEC Release 33-8408 (April 16, 2004) (addressing market timing). These regulations leave no room for state jurisdiction over this subject matter.

32. Significantly, the 1940 Act was aimed at the same harm that plaintiff alleges – the danger of dilution if securities are not priced appropriately. See H.R. Rep. No. 76-2639 at 8 (1940) (explaining that the method of pricing securities of open-end companies "may tend at times to substantial dilution of the investors' equity in the companies"); Investment Trusts and Investment Companies: Hearing before the Senate Subcommittee on Securities and Exchange of the Banking and Currency Committee, 76th Congress, 121-58 at 289 (1940) (statement of David Schenker, Chief Counsel, Securities and Exchange Commission, Investment Trust Study); NASD, 422 U.S. at 709 (Section 22 of the Investment Company Act of 1940 was enacted to eliminate or reduce so far as reasonably practicable dilution or other harms to holders of outstanding mutual fund securities resulting from the purchase or sale of such securities).

33. However, the 1940 Act also demonstrates that Congress was concerned with balancing its interest in protecting investors from dilution with its interest in allowing the securities markets to perform their important functions in interstate commerce. Thus, Congress expressly provided that securities associations, and the SEC, should set rules that would eliminate or reduce dilution "*so far as reasonably practicable*." § 80a-22(a) (emphasis added); § 80a-22(c) (referencing § 80a-22(a)); H.R. Rep. No. 76-2639 at 20 (explaining that Section 22 was intended to protect investors "so far as is reasonably practicable, against any dilution of their equity due to the methods of pricing, distribution, and redemption of redeemable securities issued by investment companies"). Congress has since amended the 1940 Act to insist that the SEC affirmatively weigh the goals of promoting "efficiency, competition, and capital formation" whenever it considers rules to protect investors. § 80a-2(c).

34. Congress' actions in setting forth basic pricing rules for securities and committing any additional regulatory role to private associations and the SEC – rather than to states – reflects not only the importance of uniform national rules, but also Congress's intention that protective and practical market interests be balanced by regulators it could trust, or require, to do so. Because Congress left no room for states to regulate the pricing of securities, plaintiff's claims with respect to Pacific Life's pricing of subaccount units are completely preempted, arising – if at all – under federal law, and are therefore removable under 28 U.S.C. § 1441.

35. This Court's jurisdiction over the valuation and pricing claims also establishes an additional basis for jurisdiction, under 28 U.S.C. § 1367(a), over the few remaining claims. As plaintiff makes clear by including pricing and non-pricing claims in the same counts, all the claims arise from the same alleged facts and are part of the same controversy.

(3) SLUSA

36. SLUSA expressly provides for removal here. 15 U.S.C. §§ 77p(c), 78bb(f)(2).

37. Plaintiff has attempted to avoid SLUSA by excluding claims based on conduct in connection with purchases or sales of Pacific Life's annuities and subaccount units by *plaintiff* and *class members*. Complaint ¶ 40. However, excluding some claims that would have come within SLUSA has not, in fact, avoided SLUSA here because the claims plaintiff *has* brought are within SLUSA. Plaintiff's claims all allege misconduct in connection with purchases or sales of Pacific Life subaccount units by *market timers*. Further, plaintiff alleges that Pacific Life was a "co-participant" with market timers, engaged in a manipulative scheme to assign incorrect values to subaccount units in order to permit "favored" market timing investors to engage in profitable securities trades that hurt other investors. Complaint ¶¶ 52, 53, 56, 57, 62, 67, 69, 72, 74, 76.

38. These allegations place plaintiff's lawsuit precisely within SLUSA because plaintiff's claim, that Pacific Life allegedly worked in cahoots with market timers to their and Pacific Life's enrichment, alleges a manipulative contrivance in connection with the purchase and sale of securities. See 15 U.S.C. §§ 77p(b)(2), 78bb(f)(1)(B).

39. SLUSA's "in connection with the purchase or sale of a covered security" language only excludes allegations of misconduct that involve no one's purchase or sale of securities, such as a complaint about being misled into not buying shares.

40. SLUSA does *not* exclude suits involving purchases or sales of securities by non-plaintiffs, either expressly or by analogy to Section 10(b) of the Securities Exchange Act of 1934 under Blue Chip Stamps.

41. As this Court has recognized, the "in connection with" language in SLUSA is intended to be coextensive with the almost identical language in Section 10(b). However, it is long settled that Section 10(b) is satisfied by securities trades made by defendants or even by their co-conspirators – and is not limited to securities' trades by those who were deceived. Thus, insider trading has long been held to violate Section 10(b) (and SEC Rule 10b-5) because it involves an insider's breach of duty in connection with his *own* purchase or sale of securities. See, e.g., Dirks v. SEC, 463 U.S. 646, 660 (1983); Carpenter v. United States, 484 U.S. 19 (1987) (affirming conviction under Section 10(b) and Rule 10b-5 of a columnist who breached his duty to his newspaper, based on securities trades by his co-participants).

42. Blue Chip Stamps certainly limited private actions under Section 10(b) and Rule 10b-5 to purchasers and sellers of securities but it was not interpreting the statute's "in connection with" language in reaching that conclusion. Blue Chip Stamps fashioned a judge-made rule to limit the implied right of action that courts, rather than Congress, had earlier supplied – after determining that the rule was not inconsistent with the statute and that it

furthered certain policy goals. In other words, the limitation on private suits under Section 10(b) was not found in the statute at all, it was added by courts to reduce the number of securities suits.

43. The Supreme Court emphasized that it had not found this limitation in the statute:

> we would by no means be understood as suggesting that we are able to divine from the language of § 10(b) the express 'intent of Congress' as to the contours of a private cause of action under Rule 10b-5. When we deal with private actions under Rule 10b-5, we deal with a judicial oak which has grown from little more than a legislative acorn. 421 U.S. at 737.

The Court therefore decided, since *it* was making the rule instead of interpreting what Congress had enacted, it could consider policy issues for itself – which it proceeded to do. Id. at 737-740 (discussing, inter alia, the "widespread recognition that litigation under Rule 10b-5 presents a danger of vexatiousness different in degree and in kind from that which accompanies litigation in general" and determining that limiting such litigation struck a useful balance, id. at 739).

44. The Court reiterated, after concluding that nothing in the statute prohibited it from adding a rule to limit private suits, that this was judge-made law, not statutory interpretation:

> We are dealing with a private cause of action which has been judicially found to exist, and which will have to be judicially delimited one way or another unless and until Congress addresses the question. Id. at 749.

45. Blue Chip Stamps shows that the Supreme Court found that Section 10(b)'s "in connection with" language was *not* limited to purchases or sales by plaintiffs. *That* was why the Court felt compelled to fashion its *own* rule: there was no such limitation in the statute.

46. This is further underscored by the concurrence. Justice Powell, joined by two others, wrote separately to note that they believed the limitation *could* be construed from the statute. Id. at 760. This was the position that *lost*. Unable to attract others to their minority view, they joined the majority. And the majority rule became controlling authority.

47. The Supreme Court continues to recognize that Blue Chip Stamps' limitation on private securities actions is *not* to be found in the "in connection with" language or anywhere else in Section 10(b) or Rule 10b-5. In Musick, Peeler & Garrett v. Employers Ins. of Wausau, 508 U.S. 286, 293, 295 (1993), for example, the Supreme Court reiterated that the limitation on private actions imposed by Blue Chip Stamps was judge-made law, not statutory interpretation. Musick built on this federal common law by fashioning a right of contribution. Id. at 297.

48. The Supreme Court's decisions since Blue Chip Stamps have also not found any such limitation in Section 10(b) itself. Rather, the Court has consistently held that purchases and sales by *anyone* satisfy Section 10(b) so long as they "coincide" with the misconduct. See, e.g., United States v. O'Hagan, 521 U.S. 642, 656 (1997) (finding Section 10(b)'s "in connection with" requirement satisfied because attorney O'Hagan's breach of duty to his firm's client coincided with his *own* purchases of securities, concluding: "The securities transaction and the breach of duty thus coincide."); accord SEC v. Zandford, 535 U.S. 813, 822 (2002) ("It is enough that the scheme to defraud and the sale of securities coincide."). In O'Hagan, the Supreme Court also made clear that the "in connection with" requirement was met, "even though the person or entity defrauded is not the other party to the trade." 521 U.S. at 656.

49. In Zandford, decided only two years ago, the Supreme Court emphasized that the statutory language "should be construed not technically and restrictively, but

flexibly to effectuate its remedial purpose." Id. at 819 (quotations omitted).

50. The Supreme Court has also found that misconduct satisfies the "in connection with" prong of Section 10(b) when the person engaged in the conduct did not purchase or sell securities himself, but instead participated in a scheme where others did the securities trading. See Carpenter, 484 U.S. at 23, 28 (ruling that Wall Street Journal columnist violated Section 10(b) and Rule 10b-5 by breaching his duty to his employer in enabling others to buy and sell securities at a profit). Noting that "the victim of the fraud, the Journal, was not a buyer or seller of the stocks traded in or otherwise a market participant, the fraud was nevertheless considered to be 'in connection with' a purchase or sale of securities within the meaning of the statute and the rule," the Court affirmed the convictions under the securities laws. Id. at 24.

51. The allegations plaintiff asserts satisfy SLUSA's "in connection with" requirement for the same reasons. Plaintiff alleges that Pacific Life, like the newspaper columnist in Carpenter, engaged in manipulative conduct, in breach of its fiduciary duty to its investors, as a co-participant in a scheme to enable market timers to advantageously purchase and sell securities, for their mutual profit. See, e.g., Complaint ¶¶ 53, 57, 62, 73-76.

52. There is no other provision of SLUSA that limits its scope to lawsuits brought solely by those who have been harmed in their purchase or sale of securities. Congress could easily have limited SLUSA's scope to match the limitation courts have imposed on private lawsuits under Section 10(b). It could have defined "covered class actions" to include only lawsuits brought by purchasers or sellers of securities. Congress could also have expressly preserved suits brought by non-purchasers and non-sellers under state law. Congress, however, did neither. See 15 U.S.C. §§ 77p(d), (f)(2)(A), 78bb(f)(3), (f)(5)(B).

53. Instead, Congress used language to define its pre-emptive scope – "in connection with the purchase or sale"

of securities – that has long been interpreted to include claims like those alleged by plaintiff. No additional restriction can be implied from SLUSA's purpose to prevent plaintiffs from making an end-run around the procedural rules governing federal securities lawsuits for two reasons. First, the statutory language provides otherwise and there is no language from which a restriction could be implied. Second, such an implication would be entirely contrary to Congress' broader purpose in enacting SLUSA.

54. Congress enacted SLUSA to protect participants in the securities market from the class action lawsuits it had concluded were doing more harm than good for investors and the economy. See, e.g., S. Rep. 105-182 at 4 (1998) ("state-court class actions involving nationally traded securities" have "damaged the overall efficiency of our capital markets"), at 5 ("We do have national markets for certain securities, and fraudulent and abusive securities class action litigation distorts the efficient operation of those markets and the optimal allocation of available capital."), id. (explaining that SLUSA was necessary because, otherwise, "a single state can impose the risks and costs of its peculiar litigation system on all national issuers").

55. Congress had long accepted the courts' elimination of *federal* lawsuits by non-purchaser/seller plaintiffs and was engaged in limiting even permitted lawsuits because it had determined that even *they* were harmful to the economy. No purpose can be implied to preserve additional *state* law suits imposing the *same* harms, when Congress did not do so expressly. SLUSA, like Blue Chip Stamps, was aimed at reducing such harms. Thus, the policy concerns on which Blue Chip Stamps relied support this Court's according SLUSA its full, broad scope.

56. This lawsuit also meets the remaining criteria for removal under SLUSA. The lawsuit is a "covered class action," because damages are sought on behalf of prospective class members. Complaint ¶¶ 38-48; see 15 U.S.C.

§§ 77p(f)(2)(A)(i)(II) and 78bb(f)(5)(B). It purports to be based on state law because it asserts only state law claims. Complaint ¶¶ 53, 57, 62, 67; see 15 U.S.C. §§ 77p(b), 78bb(f)(1). It involves a "covered security," as defined by Sections 77p(f)(3) and 78bb(f)(5)(E), because the variable annuity Separate Account, with its subaccount holdings in mutual fund portfolios, is an investment product within the meaning of the statute and registered with the SEC. See Herndon v. Equitable Variable Life Ins. Co., 325 F.3d 1252 (11th Cir. 2003); Patenaude v. Equitable Live Assurance Soc'y, 290 F.3d 1020, 1024 (9th Cir. 2002); Lander v. Hartford Life & Annuity Ins. Co., 251 F.3d 101, 108-14 (2d Cir. 2001).

57. In addition, claims "based upon Pacific Life's conduct in connection with Plaintiff's or any class member's" purchases triggered by automatic reinvestment of dividends and capital gains also fall within SLUSA, but are not excluded in the complaint. Plaintiff's express exclusion of claims in connection with plaintiff's or class member's purchases is limited to purchases of "any Pacific Life annuity product or units in any Pacific Life sub-account." Complaint ¶ 40. Automatic reinvestments were not distributed to class members as subaccount units, but as increases in the value of their subaccount units – but this increased value reflects, as do subaccount units, their beneficial ownership of shares of the mutual fund portfolios.

B. Diversity Jurisdiction

58. This Court also has jurisdiction under 28 U.S.C. § 1332 because this is a civil action between citizens of different states in which the matter in controversy exceeds $75,000.

59. There is complete diversity within the meaning of 28 U.S.C. § 1332. Plaintiff is a citizen of Illinois. Pacific Life is a citizen of California. Complaint ¶¶ 1, 3.

60. The amount in controversy exceeds $75,000 within the meaning of 28 U.S.C. § 1332 for two independent reasons. First, plaintiff seeks injunctive relief under Count

IV of a value far in excess of the jurisdictional amount. Complaint pp. 15-16. Plaintiff deceptively does not specify injunctive relief by name, but asks for it under the guise of "any other relief the Court deems appropriate under the circumstances in accordance with Section 17200." Id. at 16. Inclusion of the phrase in Count IV was specific and deliberate. Plaintiff did not include a prayer for "any other relief the Court deems appropriate" under Counts I, II, or III of the complaint. He included this request only in Count IV, his claims under Cal. Bus. & Prof. § 17200.

61. The only relief available under Section 17200 is restitution or injunctive relief. See §§ 17202, 17203; Cort v. St. Paul Fire & Marine Ins. Companies, 311 F.3d 979, 987 (9th Cir. 2002) ("Section 17200 . . . entitles an individual litigant only to injunctive and restitutionary relief"). Because plaintiff expressly asked for restitution separately, the request for "any other relief" under Section 17200 can be understood only as a stealth request for injunctive relief.

62. Courts within the Seventh Circuit consider the potential cost of such injunctive relief to Pacific Life in determining the amount in controversy because the Seventh Circuit, like many others, follows the "either viewpoint" rule. See In re Brand Name Prescription Drugs Antitrust Litig., 123 F.3d 599, 609 (7th Cir. 1997); BEM I, LLC v. Anthropologie, Inc., 301 F.3d 548, 553 (7th Cir. 2002) (courts consider "the amount at stake to either party to the suit").

63. Furthermore, the Seventh Circuit rule requires courts to look "separately at each named plaintiff's claim and the cost to the defendant of complying with an injunction directed to that plaintiff." Uhl v. Thoroughbred Tech. and Telecomm, Inc., 309 F.3d 978, 983 (7th Cir. 2002). Thus, the amount in controversy is the cost to Pacific Life of compliance.

64. The cost of compliance, and therefore the amount at stake to Pacific Life, far exceeds $75,000. Plaintiff's request for any injunctive relief the court deems appro-

priate encompasses trading rule changes and the notification requirements that would be triggered by them. The cost of even one such change would far exceed $75,000. See Griggs Decl. ¶ 9.

65. A second basis for diversity jurisdiction is that the injury plaintiff alleges is derivative, not direct, and plaintiff clearly expects the amount that would be due the mutual fund portfolios if the allegations prove true, to exceed $75,000 – given plaintiff's estimate as "not more than $75,000" for *each* plaintiff and class member for a putative class of many thousands.

66. The Second Circuit's decision in Strougo v. Bassini, 282 F.3d 162 (2d Cir. 2002), does not counsel otherwise for two reasons. First, Strougo applied Maryland law; Massachusetts law applies here because the Pacific Select Fund is organized under Massachusetts law. See Kamen v. Kemper Fin. Serv., Inc., 500 U.S. 90, 97, 109 (1991). Under Massachusetts law, the fiduciary duty of proper management is owed to the fund, not to investors. See Bessette v. Bessette, 385 Mass. 806, 809, 434 N.E.2d 206, 208 (Mass. 1982). Investors who are injured in the form of a loss in investment value can bring only derivative claims. Blasberg v. Oxbow Power Corp., 934 F. Supp. 21, 26 (D. Mass. 1996); see also Green v. Nuveen Advisory Corp., 186 F.R.D. 486, 490 (N.D. Ill. 1999) (applying Massachusetts law) (diminution in value of shares is an injury to the funds, and any harm to shareholders is derivative in nature).

67. Here, plaintiff alleges that Pacific Life's improper management permitted market timers to reduce the net asset values of mutual fund portfolios which caused his investment to lose value. The claimed damages flow from the allegedly diminished value of mutual fund portfolios, in proportion to each class member's interests in that portfolio. Under Massachusetts law, plaintiff only has a derivative claim. He does not allege he was injured by being misled into purchasing his investment, which would be a direct claim. See Blasberg, 934 F. Supp. at 26.

Rather he expressly excludes such claims. Complaint ¶ 40.

68. Second, in Strougo, unlike here, the fund itself had no claim because it was not injured, so the shareholders could not have brought a derivative action on the fund's behalf. The fund did not suffer any diminution of value but, in fact, increased in value as a result of the challenged conduct. Id. at 175. Thus, Strougo found that the plaintiff had an injury "distinct" from the fund, because the fund did not suffer any injury and the reduction in plaintiff's equity did not derive from a reduction in the value of the Fund's assets. Id. See Rohrbaugh v. Investment Co. Inst., Fed. Sec. L. Rep. ¶ 91,961, 2002 WL 31100821, *7 (D.D.C. 2002) (finding Strougo inapplicable where plaintiffs' injuries derived from the diminution of the value of mutual funds they held because in Strougo "the act that allegedly harmed the shareholders actually increased the assets of the fund").

69. In contrast, Spurgeon alleges that the funds *have* been diminished by Pacific Life's alleged mismanagement. Unlike the allegations in Strougo, Spurgeon's allegations set forth potential claims that the Pacific Select Fund itself could bring against Pacific Life. And Spurgeon's alleged damages are entirely indirect, flowing from the alleged diminution of the funds' assets, in proportion to his claimed share. Spurgeon's claims, therefore, are entirely derivative of the Fund's claims and can only be brought on behalf of the Fund. See Rohrbaugh, 2002 WL 31100821 at *7 (applying Massachusetts law in ruling that the injury alleged was not distinct from that suffered by the funds and was therefore derivative).

V. VENUE AND NOTICE

70. Venue is proper under 28 U.S.C. § 1441(a) because the action has been pending in this district and division. Defendant has filed a copy of this Notice of Removal with the Clerk of the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, in which the action has

been pending, and will serve such notice upon all adverse parties.

Dated: May 21, 2004

[attorney name and address blocks omitted]